



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

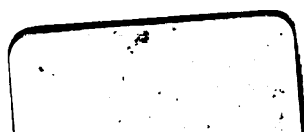


L.L.

Cw. U.K

Scott. 510

W339a



.

.

.

.

.

1

1



A
PRACTICAL VIEW
OF THE
STATUTE LAW
OF
SCOTLAND,
FROM THE YEAR MDCCXXIV,
TO THE
CLOSE OF THE SESSION OF PARLIAMENT MDCCCXXVII,
IN A SERIES OF TITLES, ALPHABETICALLY ARRANGED.

BY
JAMES WATSON, Esq. ADVOCATE,
AUTHOR OF A TREATISE ON THE LAW OF SUCCESSION
IN SCOTLAND.

IN TWO VOLUMES.

VOL. II.

EDINBURGH:
PRINTED FOR BELL & BRADFUTE,
AND THOMAS M. SHIELLS.

1828.



CONTENTS

OF

VOLUME SECOND.

	Page.
Jury Court,	1
Justiciary Court,	23
Circuits,	28
Justice of Peace,	60
Jurisdiction as to Customs,	73
Indorsation of Warrants,	76
Small Debt Court,	80
Magistrates. See Burgh Royal.	
Member of Parliament. See Parliament.	
Minor. See Curators.	
Muirburn. See Game.	
Oath of Calumny, ,	
	96
Parliament,	
	98
Qualification of Members and Votes,	102
Procedure at Elections,	121
Limitation of Personal Privileges	169
Patronage of Churches,	172
Pawnbroker, ,	183
Planting and Inclosing,	214
Poor,	225
Prescription,	237

	Page.
Long Negative Prescription,	239
Positive Prescription,	239
Vicennial Prescription of Retours,	248
Vicennial Prescription of Holograph Deeds,	245
Decennial Prescription of Tutor's Accounts,	246
Septennial Prescription of Cautionary,	248
Sexennial Prescription of Bills, &c.	244
Quinquennial Prescription,	250
Triennial Prescription of Shop Accounts,	251
Triennial Prescription of Actions for Wrongous Imprisonment,	252
Prisons. See Burgh Royal.	
Process. See Court of Session.	
Proof,	253
Extract of Registered Documents,	260
Ranking and Sale. See Bankrupt.	
Registration,	262
Seisins and Reversions,	263
Seisins in Burgh,	266
Resignations <i>ad remanentiam</i> ,	269
Charters from Subject Superiors,	270
Entails,	ib.
Summons to interrupt Prescription,	271
Adjudications,	273
Probative Writs,	274
Hornings,	275
Inhibitions,	278
Writs passing the Great and Privy Seals,	279
Rule of Competition in Real Rights,	282
General Regulations as to Records,	ib.
Registry of Ships,	298
Removing of Tenants,	299
Representation in Heritage. See Apparent Heirs.	
Representation on the Passive Titles,	306
Riot Act,	307
Runrig. See Commonry.	

CONTENTS.

vii

Page.

Salmon-Fishing. See Fishery.	
Savings' Banks,	315
Schools,	321
Sedition. See Treason.	
Sequestration. See Bankrupt.	
Sheriff,	334
Commissaries,	354
Shooting and Stabbing,	364
Small Debt Court. See Justice of Peace.	
Sorners. See Poor.	
Starr or Bent. See Highways, &c.	
Statute. See Act of Parliament.	
Summons. See Execution of Summons.	
 Tack,	 367
Teinds. See Commission of Teinds.	
Testament. See Executors.	
Thirlage,	369
Transportation,	379
Treason,	381
Sedition,	393
Turnpike. See Highways, &c.	
 Usury,	 397
 Vagrant. See Poor.	
Vitious Intromissions. See Representation.	
 Wardholding,	 402
Warehousing Act,	409
Warning. See Removing of Tenants.	
Weavers,	410
Weights and Measures. See Burgh Royal.	
Witchcraft,	411
Wrongous Imprisonment,	ib.

JURY COURT.

THIS Court was first established in Scotland by the act 55. of Geo. III. *cap.* 42, “to regulate the administration of justice in that part of the united kingdom called Scotland, by extending trial by jury to “civil causes.” This act was declared to be in force for seven years. But it was amended, and the court declared permanent, by the act 59. of Geo. III. *cap.* 35. Sect. I. has been partly superseded by a clause in the act next quoted, but the act proceeds to declare,

That the Lord Ordinary of the Outer-House, before whom such processes shall be enrolled, do remit, and he is hereby authorised and required, after defences are lodged, to remit the whole process and productions forthwith to the Jury Court in civil causes; which last-mentioned court is authorised and required, according to rules and regulations which the said court and the Court of Session are herein after empowered to make, to settle an issue or issues, and to try the same by a jury to be summoned and impannelled under the provisions now in force, or herein-after enacted for that purpose.

II. And be it enacted, That if it shall appear to the parties, or either of them, that there is a question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, it shall be competent for them to state the same orally to the Lord Ordinary, who, if he thinks fit, may give judgment *de plano*, or order pleadings on the alleged question of law or relevancy; and if he orders

pleadings, then the case is to be proceeded in according to the course of the Court of Session ; and as soon as such question of law or relevancy shall be disposed of, if matters of fact remain to be proved, the whole process and productions in the case shall be forthwith remitted to the Jury Court for the purposes aforesaid.

III. And be it further enacted, That it shall be competent for the Lord Ordinary, if it shall appear to him that there is no question of law or relevancy which ought to be decided previous to the remit of the cause to the Jury Court, forthwith to order such cause to be remitted to the said court, for the purposes aforesaid : Provided always, that it shall also be competent for the Lord Ordinary, if he sees cause, to reserve the alleged question of law for the consideration of the Court of Session, after the matters of fact shall have been found by a jury ; and in all such cases, the interlocutor of the Lord Ordinary, ordering the cause to be remitted to the Jury Court, whether with or without a reservation of the alleged question of law, shall not be subject to review by representation, petition, appeal to the House of Lords, or otherwise.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Lords Ordinary, in all cases other than the actions for damages herein-before enumerated, when matters of fact are to be proved, to order the whole process and productions in the cause to be remitted to the Jury Court, without reporting to the Inner-House : and the said Jury Court is hereby authorised and required to settle an issue or issues, and try the same by a jury, in manner aforesaid ; and if it shall appear to the said Lords Ordinary to be expedient for the due administration of justice, they may pronounce an interlocutor pointing out the matters of fact which they require to be determined by a jury ; and the said Jury Court is hereby authorised and required to settle an issue or issues, in terms of such interlo-

cutor, and such other issue or issues as may arise out of the examination of the case by the said court, and to try the same by a jury, in manner aforesaid.

V. And be it further enacted by the authority aforesaid, That it shall be lawful for the Lords Ordinary, in all cases other than the actions for damages herein-before enumerated, when matters of fact are to be proved, to prepare and settle an issue or issues without reporting to the Inner-House; and to remit the same when settled to the Jury Court, to be there tried by a jury; but nothing herein contained shall take away from the Lords Ordinary, in such cases, the power of reporting an issue or issues to the Inner-House, in the manner and form now in force.

VI. And be it further enacted by the authority aforesaid, That it shall be lawful and competent for the Court of Session in either of its divisions, in all cases depending in the Inner-House in which matters of fact are to be proved, if it shall appear to them expedient for the due administration of justice, to order and direct, by special interlocutor, the whole process and productions to be remitted to the Jury Court, for the said court to settle an issue or issues, and to try the same by a jury, as aforesaid: And if it shall appear to the said divisions to be expedient for the due administration of justice, they may pronounce an interlocutor, pointing out the matters of fact which they require to be determined by a jury, and the said Jury Court is hereby authorised and required to settle issues, in terms of such interlocutor; and the said court may likewise settle such other issues as may arise out of the examination of the case by the said court, and try all such issues by a jury in manner aforesaid.

VII. And be it further enacted by the authority aforesaid, That it shall be competent and lawful for either division of the Court of Session, in all processes other than the actions of damages herein-before enumerated, when it shall appear to them expedient for the due administration of justice, to

prepare and settle an issue or issues, and to send the same to the Jury Court, to be there tried by a jury, in manner aforesaid.

VIII. And be it further enacted, That the said divisions, or the Lords Ordinary, in all processes which come before them for judgment after verdict, may direct such farther issue or issues as they may see necessary, to enable them to pronounce judgment in the cause.

IX. And be it further enacted by the authority aforesaid, That it shall be competent to the Judges of the Jury Court to order and direct any facts not falling under the issues, but which shall appear in evidence, and which they shall deem material to the merits of the case, or important to the decision of the law, to be found by the jury, and to be indorsed on the issue or issues, or on a paper or parchment to be attached to the issue or issues, and certified under the hands of the judge who tries the cause, and returned with the verdict and issues to the division of the Court of Session, or the Lord Ordinary, by whom the case was sent to the Jury Court.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful and competent for the Judge of the High Court of Admiralty, in all processes relating to the running down of or other injury to ships, and relating to policies of insurance and charter parties, and in all maritime and mercantile cases competent to his jurisdiction as a civil judge, wherein matters of fact are to be proved, to order, by special interlocutor, the whole process and productions, without reporting to the Court of Session, to be remitted to the Jury Court; which court is hereby authorised and required finally to settle the issue or issues in the cases so remitted, and to try the same by a jury in manner aforesaid: Provided always, That nothing herein contained shall prevent the Judge-Admiral, in all cases which come before him for judgment after verdict, from directing such farther issue or is-

sues as he may see necessary, to enable him to pronounce judgment thereon : And it shall likewise be competent to the Judges of the Jury Court, to order and direct any facts not falling under the issues, but which shall appear in evidence, and which they shall deem material to the merits of the case, or important to the decision of the law, to be found by the jury, and to be indorsed on the issues, or on a paper or parchment to be attached to the issue or issues, and certified under the hand of the judge who tries the cause, and returned with the verdict and issues to the Judge of the Admiralty Court.

XI. And be it further enacted by the authority aforesaid, That it shall be competent to either of the parties in any such action in the Court of Admiralty, if the Judge-Admiral shall refuse to order a remit to be made to the Jury Court, as herein-before authorised and empowered, for the purposes aforesaid, to apply for a review of the deliverance to that effect to the Court of Session, in either of its divisions, by petition, to be intimated three days before the same is boxed ; which court, if it shall see cause, is hereby authorised to pronounce an interlocutor instructing the Judge-Admiral to make such remit.

XII. And be it further enacted by the authority aforesaid, That it shall be competent and lawful for the Jury Court, when it appears to the said court in the course of settling an issue or issues, or at any time before trial, in the cases remitted to them as aforesaid, that there is a question or questions of law or relevancy which ought to be previously decided, to remit back the whole process and productions to the division of the Court of Session, the Lord Ordinary or Judge-Admiral, who remitted the same to the Jury Court, that the question or questions of law or relevancy may be considered and determined there : Provided always, That it shall be lawful to the said division, Lord Ordinary, or Judge-Admiral, when matters of fact shall after such consi-

deration or determination remain to be proved, again to remit the whole process and all the productions to the Jury Court, in order that an issue or issues may be prepared and tried as aforesaid : Provided further, That it shall be competent to the said division and Lords Ordinary to prepare and settle an issue or issues in manner aforesaid, for the purpose aforesaid ; and it shall be competent for the Jury Court, when it appears to the said court in the course of settling an issue or issues, that a case turns upon matter of complicated accounts, or other matter to which trial by jury is not beneficially applicable, to remit back the whole process and productions as aforesaid, with their report thereon, in order that the Division, Lord Ordinary, or Judge-Admiral, may proceed with the same in such manner as shall appear to be most expedient for the administration of justice.

XIII. And be it further enacted by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to prevent the Court of Session, in either of its divisions, or the Lords Ordinary, (save and except in the cases concluding for damages herein-before enumerated,) or the Judge-Admiral, unless otherwise instructed as aforesaid by the Court of Session, to take proof on commission, by remit, or *in presentia*, and thereafter disposing of the cause in the manner now practised in such cases.

XIV. And be it further enacted by the authority aforesaid, That in all cases brought from an inferior court to the Court of Session, wherein proof by witnesses has been taken by order of the inferior court, the Court of Session, in either of its divisions, or the Lords Ordinary, if they deem further proof, to be expedient to be taken, shall direct the same to be taken, and the investigation of the facts to be completed according to the forms of the said court, unless the parties consent to cancel the depositions of such witnesses as are alive and within Scotland ; in which case it shall be competent for the Court of Session, or Lords Ordinary

respectively, to direct the case to be sent to the Jury Court, in manner provided by this and the aforesaid act of the fifty-fifth year of the reign of his present Majesty: Provided always, That nothing herein contained shall restrain the Court of Session, in either of its divisions, or the Lords Ordinary, from directing issues in the cases brought before them from an inferior court, as aforesaid, on any point or points not connected with the proof already taken before such court.

XV. And be it further enacted by the authority aforesaid, That it shall not be competent, by representation, reclaiming petition, bill of advocation, appeal to the House of Lords, or otherwise, to bring under review any interlocutor by the said Divisions, Lords Ordinary, or Judge of the Admiralty, ordering a trial by jury.

XVI. And be it further enacted by the authority aforesaid, that in all cases in which general verdicts are found by a jury, all motions for setting aside the verdict, and granting a new trial, shall henceforth be made in the Jury Court, and not in the Court of Session; and the order for granting or refusing a new trial by the Jury Court shall be final, and not subject to review, by petition, representation, appeal to the House of Lords, or otherwise; and there shall be at least two Judges in court when a motion is made for a new trial, or an order is pronounced granting or refusing the same.

XVII. And it is hereby enacted, That if the motion for setting aside the verdict be founded on the misdirection of the judge at the trial in matter of law, or on the undue admission or rejection of evidence, it shall be competent to the party against whom judgment is given by the Jury Court, to tender a bill of exceptions to such judgment in the same manner as at a trial; and the proceedings on such bills of exceptions shall be conformable in all respects to the provisions of the act of the fifty-fifth year of the reign of his present Majesty, herein-before recited, regarding bills of exception: Provided always, That in all causes remitted by the

Court of Admiralty to the Jury Court, the bills of exception shall be presented by the judge of the Jury Court to the divisions of the Court of Session alternately, beginning with the First Division; provided further, that motions for new trials on a special verdict, or special findings, shall be made in the division of the Court of Session from which the proceedings were sent to the Jury Court, in manner directed by the said recited act of the fifty-fifth year of the reign of his present Majesty: Provided nevertheless, That the interlocutor to be pronounced on such motions shall be final, and shall not be subject to review by petition, representation, appeal to the House of Lords, or otherwise.

XVIII. And be it further enacted by the authority aforesaid, That in all cases of new trial in which a bill of exceptions to a decision in the Jury Court is presented to the Court of Session, the process and productions shall remain in the Jury Court, in order to enable that court to proceed in the new trial, if the judgment shall be reversed; or to proceed to pronounce judgment upon a general verdict, in case it shall be affirmed: Provided always, That it shall be competent to the divisions of the Court of Session to order the said process and productions to be brought into the said division, when it shall deem the same to be necessary; and after an interlocutor shall be pronounced upon the bill of exceptions, the said process and productions shall be returned to the Jury Court, for the purposes aforesaid; and that in all cases of special verdicts or special findings, in all cases where the judgment of the Jury Court on a bill of exception, other than new trials, is affirmed, the whole process and productions shall be forthwith remitted to the Court of Session, that the said Court may proceed to discuss the law of the case, and pronounce judgment thereon.

XIX. And be it further enacted by the authority aforesaid, That in all cases where the verdict of the jury exhausts

the conclusions of the action, (except certain cases as herein-after provided,) it shall and may be lawful, after the elapse of the time allowed for moving for a new trial, or after a new trial shall have been finally refused, for the judge or judges of the Jury Court, by a judgment or deliverance on the verdict to be issued, and to be subscribed by the presiding judge without the necessity of any motion to that effect, to ordain that all manner of legal execution shall pass upon the same in common form; and it shall and may be lawful for the judge, or judges of the Jury Court to award not only the expenses incurred in the said court, but also the previous expenses incurred in the Court of Session, Court of Admiralty, or inferior court, and to require the auditor of the Court of Session to tax the same; and the said judgment shall specify the expenses, in the said courts and in the Jury Court; and a copy of the verdict and judgment, certified under the hand of one or other of the clerks of the Jury Court, shall be a sufficient warrant for all legal diligence and execution, and equally effectual to all intents and purposes, as if the same were an extracted decree of the Court of Session, and shall be observed as such by the Lords Ordinary on the bills, clerks of the bills, keepers of the signet, and all others; and that the letters under the signet shall in such case bear, that they proceed on the judgment of the commissioners of the Jury Court, in those instances in which, according to the present practice, they bear that they proceed on the decree of the Lords of Council and Session; and the original verdict and judgment thereon, together with the whole steps of proceeding, and such productions as may not have been taken up by the parties entitled thereto, shall in all such cases be transmitted for preservation to the keeper of the records of the Court of Session, and in other respects dealt with in the same way and manner as the extracted processes in the Court of Session are or may be transmitted and dealt with.

XX. Provided always, and be it enacted by the authority

aforesaid, That in special verdicts, and in all cases where the verdict contains any special findings, which may require the judgment of the Court of Session on the law, and also in all processes of reduction or declarator, and in all processes wherein the decree to be pronounced will form a part of the title, or will affect or qualify the title to any heritable estate, the verdict, with the whole process and productions, shall be returned to the Court of Session, in order that the said court may pronounce decree in the said cause: Provided always, in cases remitted by the Admiralty Court, when the return by the jury is in the form of a special verdict or special findings, which may require the judgment of the Judge-Admiral on the law, the verdict, with the whole process and productions, shall be returned into the Admiralty Court, that the Judge-Admiral may pronounce judgment in the cause; and that in cases remitted by the Court of Admiralty, the bills of exception shall be returned to the divisions of the Court of Session alternately, beginning with the first, unless the case was sent to the Jury Court in consequence of a petition to the Court of Session as herein-before enacted, in which case the bill of exceptions shall be returned to the division to which the previous petition was presented.

Section XXI. fixes the four terms to be held in each year.

Section XXII. fixes the three sittings to be held in each year.

XXIII. And be it further enacted by the authority aforesaid, That the proceedings for preparing and settling issues, for hearing and determining all matters necessary for forwarding cases to be tried by jury, the hearing of all motions respecting judgments, new trials, expenses of process; all applications for remits to the Court of Session, and all other matters and things falling within the jurisdiction of the Jury Court, and not requiring the intervention of a jury, may and shall be heard and determined during the term only: Provided always, that nothing herein contained shall prevent one

or more judge or judges of the Jury Court from making orders out of term, on the application of parties by the counsel, respecting commissions for the examination of witnesses, respecting the inspection of written evidence previous to a trial by jury, and in all other matters and things relative to furthering the trial of causes at the sittings or on the circuits, in case such application could not have been made during the preceding term; such judge or judges being satisfied, by affidavit or otherwise, that the application so made could not have been made in the preceding term; and nothing herein contained shall prevent the judge or judges presiding at the trial of any case from putting off the same on account of the absence of a material witness or witnesses, or for any other cause in which justice requires that a trial should be put off; provided it is ascertained, by affidavit to the satisfaction of the judge or judges, that there is good cause for so doing, and that such cause could not have been foreseen in time, to have moved the same in the preceding term.

XXIV. And be it further enacted by the authority aforesaid, in all processes in which the Jury Court is to settle the issues, That rules and regulations shall be and are hereby directed to be framed for ordering condescendences and answers, by virtue of the authority given in this act for making rules and regulations, so that the condescendences and answers may either be in the Court of Session or in the Jury Court, as may be found most expedient; and in all cases in which condescendences and answers shall be ordered in the Jury Court, the clerk of the said court shall collect the fees on such proceedings payable in the Court of Session, and shall account to the officer in the Court of Session entitled to receive the same, for all fees which shall be so collected.

The act defines the powers of the court in regard to jurors, officers and witnesses,—to make regulations for the proceedings of the court, and for cross-examination

of witnesses,—the appointment of clerks and auditor. It then declares,

XXXV. And be it enacted by the authority aforesaid, That in cases where an order for a view has been obtained, and that the place to be viewed lies in the counties of Sutherland, Caithness, and Orkney, which counties are not required to send jurors to Inverness, the sheriffs depute or substitute of the said counties respectively shall return three persons of the county in which the action arises, to be the viewers: and that the said viewers shall be bound to attend at the trial, and be first called to serve on the jury; the manner of proceeding to take the view, and the qualification of the jurors, being subject always to the regulations now in force respecting views, and respecting the qualification of jurors: and if from any cause it shall be expedient that viewers should be sent from a neighbouring county, the Jury Court shall issue an order for a certain number of jurors of the nearest county from which it may be expedient that viewers should be taken, and they shall be bound to attend the view, and shall be first called to serve on the jury, as at present practised.

Sections XXXVIII. and XXXIX. relate to the qualifications and emoluments of the Lord Chief Commissioner and other Commissioners of the court. And the rest of the statute relates to the manner of purchasing ground for erecting buildings, &c.

The act 6. of Geo. IV. *cap.* 120, contains the following provisions:

XXVIII. And whereas by an act passed in the fifty-fifth year of his late Majesty King George the Third, intituled, An act to facilitate the administration of justice in that part of Great Britain called Scotland, by the extending of jury trial

to civil causes; and by another act passed in the fifty-ninth year of his late Majesty's reign, to amend the act above mentioned; and by regulations framed and approved of in the manner by the foressaid acts provided, several provisions have been made relating to the Jury Court, and to trial by jury in civil causes, some of which it is expedient to repeal, vary, and amend, and to make other provisions for the further improvement of that mode of trial; be it therefore further enacted, That the provisions of the said act of the fifty-ninth of George the Third, by which it is directed that certain actions be remitted to the Jury Court, but that, previous to their being so remitted to the Jury Court, questions of law or relevancy may be raised, pleaded, and decided in the Court of Session, shall be and the same are hereby repealed; and the following actions, whether originating in the Court of Session or in the Court of Admiralty, shall be held as causes appropriate to the Jury Court, and shall, for the purpose of being discussed and determined in that court, be remitted at once to that court in manner herein-after to be directed; namely, all actions on account of injury to the person, whether real or verbal, as assault and battery, libel or defamation; all actions on account of any injury to moveables or to land, when in this last case the title is not in question; all actions for damages on account of breach of promise of marriage, or on account of seduction or adultery; all actions founded on delinquency or *quasi* delinquency of any kind, where the conclusion shall be for damages only and expenses; all actions on the responsibility of shipmasters and owners, carriers by land or water, innkeepers or stablers, for the safe custody and care of goods and commodities, horses, money, clothes, jewels, and other articles, and in general all actions grounded on the principle of the edict *Nauta, carpones, stabularii*; all actions brought for nuisance; all actions of reduction on the head of furiosity and idiotcy, or on facility and lesion, or on force and fear; all actions on policies of insurance, whether

for maritime or fire or life insurance; all actions on charter parties and bills of lading; all actions for freight; all actions on contracts for the carriage of goods by land or water; and actions for the wages of masters and mariners of ships or vessels.

XXIX. And be it further enacted, That all the actions above enumerated, originating in the Court of Session, shall be first enrolled in the roll called the regulation roll, whether appearance shall have been entered for the defender or not; and if no appearance shall be made when the cause is called, decree shall be pronounced in absence, according to the present practice; but if appearance shall be made for the defender, or as soon as the defender shall be reponed against a decree in absence, the Lord Ordinary shall forthwith remit the cause to the Jury Court; and in any of the causes or actions above enumerated, which shall originate in the Court of Admiralty, judgment shall at the first calling before the Judge-Admiral be pronounced, if no appearance shall be made for the defender; but as soon as the defender shall enter appearance, and be reponed against the decree pronounced in absence, the Judge-Admiral shall forthwith remit the cause to the Jury Court, provided the demand shall amount to forty pounds and upwards, and provided, that if the cause be maritime, caution shall have been found according to the practice of that court; and such causes when remitted to the Jury Court, from whatever court, shall be prepared, and the record of averments and of pleas completed and authenticated by the Jury Court, or any one of the judges of that court, in the same manner as is hereby directed to be done in the Court of Session.

XXX. And in contemplation of the increase of causes thus to be remitted to the Jury Court, be it further enacted, That, of the judges of the Court of Session, two shall be appointed as additional commissioners of the Jury Court; and that in the preparation of the enumerated causes which shall

be sent at once to the Jury Court as above, the Jury Court, or one of the judges thereof, shall proceed in the way and manner herein-before directed, in regard to the preparation of causes in the Court of Session.

XXXI. And be it further enacted, That it shall and may be lawful for his Majesty to appoint such two of the said judges of the Court of Session to be additional judges of the Jury Court in the manner in which Judges of the Jury Court are directed to be appointed by an act passed in the fifty-fifth year of the reign of his late Majesty George the Third, intituled, An act to facilitate the administration of justice in that part of the united kingdom called Scotland, by the extending the trial by jury to civil causes; and to each of such judges there shall be paid the sum of six hundred pounds *per annum*, payable in the same manner and at the same time with the salaries of the other judges of the said Jury Court; for which purpose it shall and may be lawful for his Majesty, his heirs and successors, to order and direct to be issued by quarterly payments, out of the monies that shall arise from any of the duties and revenues in that part of Great Britain called Scotland, which by the several acts made in the seventh and tenth years of the reign of Queen Anne, were made chargeable with the fees, salaries, and other charges allowed or to be allowed by her Majesty, for keeping up the Courts of Session, Justiciary, and Exchequer in Scotland, the sum of one thousand two hundred pounds, in addition to the sum of seven thousand pounds, directed by the said recited act to be issued in the manner therein directed.

XXXII. And be it further enacted, That if any assistant clerk and closet keeper, or any other clerk or officer of court in the said Court of Session, or any clerk or other officer in the said Court of Teinds, or in the said Court of Admiralty, courts in Scotland, shall make application to the Barons of Exchequer in Scotland, setting forth the circumstances of his case, and shall make it appear that he has suffered, or will suffer pecuniary loss from the operation or effect of any

of the regulations of this act, it shall and may be lawful for the said Barons to award to any such person such compensation as the said Barons shall find such person entitled to, either by the payment of a gross sum, or by way of annuity, as they shall think proper, to be paid out of the same fund, and in the manner in which compensations are directed to be paid, and are made payable, under an act passed in the first and second years of the reign of his present Majesty, intituled, An act for establishing regulations respecting certain parts of the proceedings in the Court of Session, and in the Court of Commission for Teinds, and respecting the duties, qualifications, and emoluments of certain clerks and other officers of the said courts.

XXXIII. And be it further enacted, That if after the record shall have been completed in manner already directed as to causes in the Court of Session, the parties shall, by mutual admissions, render any trial of the facts unnecessary, and leave, in the opinion of the Jury Court, or judge thereof, a question merely of law to be determined, the said Jury Court, or the judge thereof, after having those admissions put upon record, and subscribed by the counsel for the parties, as already directed for causes in the Court of Session, shall forthwith remit the cause to the Ordinary in the Court of Session by whom the same was remitted, or to the judge of the High Court of Admiralty, if the cause originated in that court, to be proceeded in and determined by those courts respectively; and if after the record shall have been completed as above, the parties shall not be agreed upon the facts, so as to bring the cause to a question merely of law, but shall concur in a minute or note to the Jury Court or judge, requiring that any question of law or relevancy arising out of the pleadings to be specified in such minute or note shall be determined before going to trial, the said court or judge, if the request shall appear just or reasonable, shall remit such question to the Ordinary by whom the cause was remitted,

or to the Court of Admiralty, if the cause shall have originated in that court; and the cause shall afterwards proceed in those courts respectively, for the decision of such question of law or relevancy; but if either of the parties shall, without the concurrence of the other, insist that there is a point of law or relevancy, which ought previously to trial to be determined, it shall be competent for such party to move for an order to have the cause remitted to the Court of Session, or Court of Admiralty, if the cause have come from that court; and on such motion it shall by the said Jury Court, or judge thereof, be determined whether the question raised ought to be decided previous to trial, or left for discussion at the trial, or for decision after verdict; and if such question shall arise before one of the judges of the Jury Court, he shall have it in his power either to determine the question, or to report it for decision by the whole judges of the Jury Court, or a quorum thereof, consisting in all cases of not less than three of such judges: and the decision of the said judge of the Jury Court in the said matter shall be final and conclusive, if not brought under review of the whole Jury Court, by motion to that effect, made in the said Court, and of which due notice shall be given according to the form of giving notices in that court, within ten days after the interlocutor of the said judge shall be pronounced; and the decision of the Jury Court, either pronounced on the review of the said judge's interlocutor, or on the cause being by him taken to report, shall be final on that question; and if it shall be ordered by the said judge or Jury Court, that such question ought to be determined previous to trial, the cause shall be forthwith remitted to the Ordinary of the Court of Session, by whom the same was remitted to the Jury Court, or to the judge of the High Court of Admiralty, respectively, to have that question determined; and when, in either of the cases now specified, the cause shall be remitted to the Court of Session, or to the judge of the High Court of Admiralty, for their decision on a previous

question of law, the said Court of Session, or the judge of the Court of Admiralty, shall proceed to determine the same according to the rules and regulations of those respective courts; the determination of the Court of Session being final in that court, and that the Court of Admiralty subject, as it now is by law, to the review of the Court of Session; and the determination of such previous question of law or relevancy shall not be open to appeal to the House of Lords without leave expressly granted, reserving the full effect of the objection to the decision in any appeal to be finally taken; and after the determination of such question, the cause may be remitted back to the Jury Court, to be there finally disposed of; and if there shall remain matter of fact to be ascertained between the parties, the said matter shall be tried by jury, and the parties shall forthwith proceed before the said Jury Court, or one of the judges thereof, to prepare the issue or issues for trial, in manner herein-after directed.

XXXIV. And be it further enacted, That from and after the said eleventh day of November next, when a cause shall be ready for the framing of issues, whether it be one of the causes above enumerated as appropriate to the Jury Court, or a cause remitted generally from the Court of Session for trial by jury, the pursuer of the issue shall deliver to the clerk of the Jury Court the issue or issues in the cause which he may conceive to be proper for trial, prepared and signed by counsel; and in like manner the defender in the issue may, if he think proper, lodge with the clerk the issue or issues in the cause which he may conceive to be proper for trial, prepared and signed in like manner; and if the issue or issues so respectively delivered to the clerk shall be approved of by the Jury Court, the same issues shall be delivered out to the parties by the clerk to be tried by the jury; but if the issues shall not be delivered by the parties, or either of them, to the said clerk, or if, when so delivered, they shall not be approved of by the court, the said court shall direct a proper issue or issues to be framed, or shall alter

the issue or issues as framed and delivered, either by adding such other issues as they may deem necessary, or by leaving out such as are unnecessary, or by re-modelling those which have by the parties been delivered; and a copy of the issue or issues so altered by the court shall be delivered out for trial to the respective parties in the cause; provided, however, that if either party shall object to the issues, as settled by the court, he shall be at liberty, at any time within ten days, to apply to the court, by motion, to have such alteration made therein as he may think will better adapt the issue for the trial of the cause, or to have the issues originally proposed by him adopted; and the court shall, after hearing counsel, make such order thereupon as the justice of the case may require, and which order shall be final.

XXXV. And whereas by one of the regulations for the government of the Jury Court, framed and approved of in the manner directed by the aforesaid act of the fifty-ninth of his late Majesty, it is ordered, that preparatory to trial by jury, the parties shall reciprocally exchange lists of the witnesses to be examined; but the practice thereby enjoined has been found inexpedient; be it therefore enacted, That the above regulation shall be, and the same is hereby repealed; and from and after the date of this act, it shall not be necessary for the parties to produce and exchange, as preparatory to the trial, the lists of the witnesses proposed to be examined by them, but the parties shall be at liberty at the trial to adduce and examine such witnesses as they may think fit, without having given any previous notice of their intention to call them.

XXXVI. And be it further enacted, That so much of the foresaid act of the fifty-ninth of his late Majesty, as regulates the terms and the times of the sittings of the said Jury Court, shall be and the same is hereby repealed; and from and after the said eleventh day of November next, the said Jury Court shall meet for the dispatch of the business of the court,

whether requiring the intervention of a jury or not, during the whole period of the session of the Court of Session, and that they may hold sittings for the trial of issues for a fortnight thereafter, and also for ten days during the Christmas recess; and during the foresaid space, the said court, or the individual judges thereof, shall sit on such days, and with such continuation of days, as shall by act of sederunt, to be made in manner herein afterwards provided, be appointed.

XXXVII. And in order to prevent doubts which have been raised on the provisions of the foresaid act of the fifty-ninth of his late Majesty, relating to motions for new trials, be it enacted, That in all cases where issues have been prepared and are sent from the Court of Session for the ascertainment of matter of fact, and the verdict is made returnable to that court, all motions for new trial shall be made in the Inner-House of that division of the court from which the issue or issues has or have been sent; and motions for new trials shall in all other cases be made in the Jury Court.

XXXVIII. And whereas by the foresaid act of the fifty-ninth of his late Majesty it is provided, that in all causes remitted by the Court of Admiralty to the Jury Court, the bills of exceptions shall be presented by the judge of the Jury Court to the divisions of the Court of Session alternately; but no provision is made with respect to motions for new trials on verdicts in cases coming from the Court of Admiralty; be it enacted, That motions for new trials shall be made in the divisions of the Court of Session alternately in cases of the above description, where the verdict is on an issue prepared and sent from the Court of Admiralty for ascertaining facts, and returnable into that court, in a maritime cause; and motions for new trials in all other cases shall be made in the Jury Court.

XXXIX. And whereas it will essentially contribute to the attainment of the objects proposed in this act, that in the High Court of Admiralty, the Court of the Commissaries of Edinburgh, and inferior courts, forms of proceeding in the

preparation of causes which have been before directed relative to causes in the Court of Session shall be followed as closely as may be done consistently with the peculiar nature of those several jurisdictions, and with the state of those courts in respect to the skill and legal knowledge of the procurators who attend and practise therein ; therefore, and in order to establish uniformity in the modes of proceeding in the said courts, and follow out the spirit of the present act, in so far as that may be done consistently with local circumstances, be it further enacted by the authority aforesaid, That the Judges of the Court of Session and Jury Court, as herein afterwards empowered, shall, and they are hereby required, to make due inquiry, and thereupon to fix, by act of sederunt, such regulations, to be observed in the practice of the above courts, as may best be calculated to give effect to this act, and to forward the object herein proposed.

XL. And be it further enacted, That when in causes commenced in any of the courts of the sheriffs, or of the magistrates of burghs, or other inferior courts, matter of fact shall be disputed, and a proof shall be allowed and taken according to the present practice, the Court of Session shall, in reviewing the judgment proceeding on such proof, distinctly specify in their interlocutor the several facts material to the case which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found, or on matter of law, and the several points of law which they mean to decide ; and the judgment on the cause thus pronounced shall be subject to appeal to the House of Lords, in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to the facts, be held to have the force and effect of a special verdict of a jury, finally and conclusively fixing the several facts specified in the interlocutor : Provided, however, that, except in consistorial causes, the Court of Session shall, in reviewing the sentences of inferior judges, have power to send to the

Jury Court such issue or issues to be tried by jury, as to them shall seem necessary for ascertaining facts which may not have been proved to their satisfaction by the evidence already taken, or which may have been omitted in the cause, the verdict to be returned to the Court of Session, to assist that court in the determination of the cause; and the said court shall also have power to remit the whole cause for trial to the Jury Court; and in neither of these cases shall it be necessary to have the consent of the parties to the cancelling of the depositions already taken in the cause before proceeding to jury trial, but the Court of Session shall have power to give such directions with regard to the proof already taken, or with regard to any part or parts thereof, as to them shall seem just; to which effect the provision in the foressaid act of the fifty-ninth year of his late Majesty, in so far as the consent of the parties to the cancelling of the depositions already taken is thereby required, shall be and the same is hereby repealed; and further, the Court of Session shall have power to remit the cause with instructions to the inferior court, if that course shall appear to them the most just and expedient in the circumstances of the case; but it is hereby expressly provided and declared, that in all cases originating in the inferior courts in which the claim is in amount above forty pounds, as soon as an order or interlocutor allowing a proof has been pronounced in the inferior courts (unless it be an interlocutor allowing a proof to lie *in retentis*, or granting diligence for the recovery and production of papers,) it shall be competent to either of the parties, or who may conceive that the cause ought to be tried by jury, to remove the process into the Court of Session, by bill of advocacy, which shall be passed at once without discussion and without caution; and in case no such bill of advocacy shall be presented, and the parties shall proceed to proof under the interlocutor of the inferior court, they shall be held to have waived their right of appeal to the House of Lords,

against any judgment which may thereafter be pronounced by the Court of Session, in so far as by such judgment the several facts established by the proof shall be found or declared.

ACTS OF SEDERUNT.

3. July 1823, which repeals all preceding acts of sederunt.—A. S. 29. Nov. and 24. Dec. 1825.—and A. S. 8. March 1828.

Beveridge's Form of Process, p. 649. and App.

JUSTICIARY COURT.

This court was established at a very early period. But the whole institution was new-modelled by the statute 1672, *cap.* 16, which is as follows :

Seeing causes criminal are of the greatest importance, and may extend to the lives and liberties of any of his Majesty's subjects, and their persons and fortunes; and seeing the punishment of crimes is of the greatest consequence for the safety and security of his Majesty's person and authority, and the peace and quietnesse of the kingdom, and therefore matters criminal ought to be determined in the most solemn, exact and regular way, that the loyal and innocent may be in full security, and offenders may be punished either in the most public places of the kingdom, or in the places where the crimes have been committed, to terrifie others from the like; that whereas formerly assessors from time to time were appointed to the Justice-General, in matters of importance, which being ambulatory, cannot be so convenient, as if all the members of that court were settled and chosen by his

Majesty of fit persons, who might make it their work to make a just and constant procedure in matters criminal :

1. For that effect, that the office of deutes in the justice court be suppressed, and that five of the Lords of Session be joined to the Justice-General and Justice-Clerk, and all of them invested with the same and equal power and jurisdiction in all criminal causes ; that the Justice-General being present preside, and in his absence the Justice-Clerk, and in absence of both, that these present elect one of their number to preside, four of the whole number being always the quorum of that court, except at the circuit courts.

2. That they be appointed to meet each Monday at nine of the clock in time of session, and oftner if businesse so require.

3. That the persons to pass upon assizes be listed, and their names and designations insert in an roll to be signed by the said judges or their quorum.

4. That for the splendour of that court, all the judges sit in red robes faced with white, that of the Justice-General's being lined with ermine, for distinction from the rest.

5. That once a year, in the moneth of April or May, circuit courts be keeped, two of their number appointed to go and keep courts at Dumfries and Jedburgh, two at Stirling, Glasgow and Ayr, and other two at the towns of Perth, Aberdeen and Innernesse ; the Justice-General being alwayes supernumerary in any of these circuit courts.

6. That it be left and recommended to the judges of that court, to regulat the inferior officers thereof, and order every other thing concerning the said court.

7. That a convenient room be appointed for their meetings, benches for the judges, a place for the Justice-General, more eminent than the seats of the other judges ; that the advocats, clerk, assize and pannels have distinct places appointed to them.

8. That the clerk of the court, nor no other person, be present with the assize after they are inclosed.

9. That the chancellor of the assize mark what way every individual person who is upon the assize shall vote, whether condemning or assoilzieing, and that on the same paper where-in the verdict of assize is written ; which after the pronouncing of the verdict, is to be closed and sealed with the seals of the court, of the chancellour of the assize, and of so many moe of that number as the chancellor shall think fit, and never to be opened again, but by order of the judges ; with certification, if the clerk who shall have the keeping of the said verdict, do make open the same without warrand, he shall be deprived of his office, and otherwayes punished as the judges shall think fit.

10. That in all criminal pursutes, the defender or his advocats be alwayes the last speaker, except in cases of treason and rebellion against the king.

11. That when any criminal libel or summons of exculation are given and execute against any party, that at the same time, lists of the witnesses to be adduced for proving of the said libel and summons, and of the persons who are to pass upon the inquest, be also given to them ; to the effect the party may know what to object against the saids witnesses and assizers, and may take forth diligences for summoning of witnesses for proving of their objections, why any contained in the saids lists should not be admitted to be a witness, or upon the assize.

The act 1681, *cap. 22*, declares.

Our Sovereigne Lord, and Estates of Parliament, doe statute and ordain, that in time of vacance of the Session, three of the Commissioners of Justiciary shall be a sufficient quorum, who shall meet at Edinburgh in the moneth of July yearly, any thing contained in the sixteenth act of the third Session of his Majesties second Parliament contrary thereto notwithstanding.

This last statute was declared to be in force both during the session and vacation of the Court of Session,

by the act 23. of Geo. III. *cap.* 45, "for regulating
"the proceedings of the Court of Justiciary and circuit
"courts in Scotland," which is quoted below.

With regard to the jurisdiction of this court, the act 1681, *cap.* 16, quoted in the title "Admiral," p. 19, declares all crimes committed on the high seas to be cognisable only by the Judge-Admiral.

The act 1696, *cap.* 5, quoted in the title "Bankrupt," p. 103, introduces another exception in the case of fraudulent bankruptcy; but this has been altered by the statute 7. and 8. of Geo. IV. *cap.* 20, passed "to regulate the prosecution of fraudulent bankruptcy
"in Scotland," which is as follows :

"Whereas, it is expedient, that the Court of Justiciary in
"Scotland should have jurisdiction in cases of fraudulent
"bankruptcy," be it therefore enacted, &c. That it shall and
may be lawful to prosecute all persons accused of fraudulent
bankruptcy in Scotland before the High Court or any Circuit
Court of Justiciary by indictment or criminal letters, and ac-
cording to the same form and course of proceeding as is used
in regard to other offences prosecuted before the said courts:
and the judges of the said High Court and Circuit Courts are
hereby authorised and empowered to try all cases of fraudu-
lent bankruptcy, and to inflict such punishment on persons
convicted thereof, as it is now competent for the Lords of
Session to award against persons convicted of the said crime.

II. Provided always, and be it enacted, That it shall and
may be lawful for the trustee appointed for the management
of the sequestrated estate of any bankrupt in Scotland, or any
creditor whose claim has been received and has been duly
ranked upon any such sequestrated estate in the sederunt-
book kept by the trustee, with the concurrence of his Majesty's
advocate for Scotland, to prosecute any such offence before

the High Court or any Circuit Court of Justiciary, without prejudice always to the title of the public prosecutor to insist in all such prosecutions.

And the act 1701, *cap.* 6, excepts those cases of wrongous imprisonment, where the action concludes only for the pecuniary penalties to the injured party. The act is quoted in the title "*Wrongous Imprisonment.*"

But, in general, the jurisdiction of the Supreme Criminal Court can only be excluded by a direct and plain application of these statutes. This point is fully illustrated by Baron Hume, vol. II. p. 37.

There are many cases in which the Court of Justiciary has an exclusive jurisdiction by statute.

See acts 1455, *cap.* 45.—1477, *cap.* 78, directed against sorners, when prosecuted to a capital conviction.

1581, *cap.* 105, directed against notour adultery.

1587, *cap.* 27, and 1633, *cap.* 7, against disturbing ministers or intruding into churches.

1661, *cap.* 21, against that species of blasphemy which consists in railing against God.

1695, *cap.* 11, repeatedly denying any of the persons of the Trinity.

1594, *cap.* 196, hearing mass, if prosecuted for the capital pains.

1700, *cap.* 3, being a popish priest, where the conclusion of the libel is, that the offender shall be banished.

1597, *cap.* 251, against usury, where the corporal pains are insisted for.

1661, *cap.* 34, and 1698, *cap.* 6, against clandestine

marriage, where the celebrator is to suffer banishment or corporal pains.

Mr Hume adds, that the jurisdiction of the High Court of Justiciary is exclusive generally "with respect to all statutes which order any crime to be punished with transportation to parts abroad."

There are some crimes which, though not originally capital, have been made so by statute, and which, for this reason, are cognisable only by the Court of Justiciary.

Incest, by the act 1567, *cap.* 14.

Cursing or beating of parents, by 1661, *cap.* 20.

Attempting to kill a minister, or to rob his house, by 1670, *cap.* 4.

Invading a privy counsellor on account of service done his Majesty, by 1600, *cap.* 4.

Felony, as committed in violation of the riot act ; 1. of Geo. I. *cap.* 5.

Enlisting soldiers to serve a foreign state ; 9. of Geo. II. *cap.* 30.

This High Court is the only competent tribunal for trial of the four pleas of the Crown, murder, robbery, rape, and fire-raising ; and it alone can provide a remedy for all extraordinary occurrences in the course of criminal business.

CIRCUITS.

The obligation to hold circuit courts was fixed by several old statutes, most of them prior to the institution of the College of Justice.

The act 1440, *cap. 5*, declared, "that justice aires
" must be held twice in the year."

This was also the rule by the act 1483, *cap. 94*, "of
" justice aires."

The act 1491, *cap. 19*, directed that circuits should
be held twice in the year.

And the act 1587, *cap. 81*, is to the same purpose.

Under these statutes the circuit courts were appointed to be held twice in the year ; but this was changed to one annual meeting, except in special cases, by the act 10. of Queen Anne, *cap. 32*. But by 20. of Geo. II. *cap. 43*, the judges are directed to hold circuit courts regularly twice a-year.

According to the statute 30. of Geo. III. *cap. 17*, the spring circuits must be held between the 12th of March and 12th of May annually.

The act 23. of Geo. III. *cap. 45*, "for regulating
" the proceedings of the Court of Justiciary and circuit
" courts in Scotland," (made perpetual by the 27. of
Geo. III. *cap. 18*,) declares :

That it shall and may be lawful for the Court of Justiciary, and the said court is hereby authorised and required, at the time of settling and appointing the spring and autumn circuits, that is to say, between the 1st and 20th days of March and 1st and 20th days of August in each year, by an act or minute to be recorded in the books of adjournal, to declare and determine how long the judge or judges shall continue and remain in each circuit town or place of the respective districts ; at the expiration of which time, so to be limited and declared, the justice ayre at such town or place shall be concluded and ended, the jury, sheriffs, and other magistrates discharged from their attendance, and the judge or judges

not obliged to continue longer in such town or place, any thing in the foresaid act to the contrary notwithstanding.

II. Providing always, That if any trial or matter, civil or criminal, shall happen to be begun or entered upon, and not concluded and determined, before elapsing of the time so to be limited and declared for the judge or judges continuing in each circuit town or place, it shall nevertheless be proceeded in, and the judge or judges, and jury, shall not be at liberty to depart or leave the said town or place till the same is concluded and determined; and provided also, That the judge or judges of the circuit courts shall continue, and the sheriffs and other officers shall attend them, by the space of three whole days at the least at each town or place where the circuit shall be held, but that the jury shall be discharged from their attendance as soon as the business may admit.

“ III. And whereas, by an act made in the 25th year of
“ the reign of his said late Majesty King George the Se-
“ cond, intituled, An act for the more effectual trial and pu-
“ nishment of high treason and misprision of high treason,
“ in the Highlands of Scotland, and for abrogating the prac-
“ tice of taking down the evidence in writing in certain cri-
“ minal prosecutions, and for making some farther regulations
“ relating to sheriffs-depute and stewarts-depute, and their
“ substitutes, and for other purposes therein mentioned; and
“ reciting, That whereas the taking down and reducing into
“ writing the evidence in criminal causes and prosecutions,
“ (not extending to the loss of life, or to demembration,) be-
“ fore the Court of Justiciary, and the circuit courts, in that
“ part of Great Britain called Scotland, had, by experience,
“ been found very inconvenient, and to occasion great delay
“ as well as expense; it is therefore enacted, That from and
“ after the first day of July in the year of our Lord 1748, it
“ shall and may be lawful for the said Court of Justiciary,
“ and the said respective circuit courts, to proceed in, try, and
“ determine all causes and prosecutions before them, for any
“ crime or crimes not inferring the punishment of death, or

“ demembration, whereupon the verdict of an assize or jury
“ is to pass, upon examining and hearing the evidence of the
“ witness or witnesses adduced or examined in any such
“ cause or prosecution *viva voce*, without reducing into writ-
“ ing the testimony of any such witness or witnesses ; and
“ that the practice of taking down and reducing into writing
“ the testimony of witnesses in such cases be, and the same
“ is thereby abrogated and abolished ; and whereas, the al-
“ teration introduced in the trial of the lesser crimes by the
“ above act has been found by experience to be attended
“ with important and salutary consequences : and whereas,
“ the taking down and reducing into writing the evidence
“ given in the trial of crimes, which may infer the punish-
“ ment of death or demembration, as now practised in the
“ Court of Justiciary, and Circuit Courts, has been found,
“ by long experience, to be attended with great inconve-
“ niences, by prolonging trials to such a length as has
“ been found dangerous to the health of the judges, counsel,
“ and jury, whereby the best jurymen are often deterred from
“ attending such service ; and those who do attend, after
“ being exhausted with the fatigue of such long trials, are
“ little able to discharge their duty in reconsidering the
“ whole evidence as taken down at such length in writing,
“ in order to form their verdict ;” for remedy whereof, be
it enacted, by the authority foresaid, That it shall and may
be lawful for the said Court of Justiciary, and the said re-
spective circuit courts, to proceed in, try, and determine all
causes and prosecutions before them for any crime or crimes
inferring the punishment of death, or of demembration, in
the same manner as is now practised in prosecutions for
lesser crimes, by the verdict of an assize or jury, upon ex-
amining and hearing the evidence of the witness or witnes-
ses adduced or examined in any such cause or prosecution
viva voce, without reducing into writing the testimony of such
witness or witnesses.

IV. Provided always, That if in the trial of any of the

crimes which may infer the punishment of death or demem-
bration it shall appear to the judges more expedient to take
down and reduce to writing the testimony of all or any
number of the witnesses, according to the present practice,
it shall be lawful for them to proceed in that manner; any
thing in this present act to the contrary notwithstanding.

V. Provided also, That in all such trials and prosecutions,
whether the evidence be reduced into writing, or be taken
from the witnesses *viva voce* without reducing the same into
writing, the counsel on both sides, and the pannel or prison-
er, may interrogate the witnesses upon all pertinent and le-
gal questions, and immediately before the assize or jury shall
be inclosed, the evidence shall be summed up by the judge,
or one of the judges before whom such trial shall be had.

VI. Provided likewise, That nothing herein contained
shall alter, or be understood to alter, in any respect, the form
or mode of trial before the said courts for high treason or
misprision of treason.

“ VII. And whereas by an act passed in the Parliament
“ of Scotland in the year 1672, intituled, Act concerning the
“ regulation of the judicatories, among other regulations of
“ the Court of Justiciary, it is provided, That four of the
“ judges shall always be a quorum of that court; and
“ whereas, by another act of the Parliament of Scotland,
“ made in the year 1681, intituled, Act appointing the quo-
“ rum of the Justice Court in time of vacance, it is statuted
“ and ordained, That in time of vacance of the Session, three
“ of the commissioners of justiciary shall be a sufficient quo-
“ rum; and whereas it has been found, from experience, that
“ the quorum appointed by the act of the Parliament of
“ Scotland first above recited is often attended with incon-
“ veniences, as interfering with the attendance of the judges
“ of the Court of Justiciary to their duty as judges in the
“ Court of Session, and that the reason for reducing the
“ quorum of the said Court of Justiciary to three, applies
“ with more propriety to the time of the sittings of the Court
“ of Session than to the time of the vacation of that court,”

be it therefore enacted by the authority aforesaid, That any three of the judges of the Court of Justiciary, who are also judges of the Court of Session, shall be a sufficient quorum of the said Court of Justiciary, as well during the sittings of the Court of Session, as in the time of vacance or recess of that court.

VIII. And be it enacted by the authority foresaid, That all the powers, authorities, and regulations contained in this act, shall take place and have continuance from and after the 1st day of July next, for the term of three years, and from thence to the end of the then next Session of Parliament, and no longer.

Concerning the procedure at criminal trials, and the choosing of jurors, the following statutes have been passed.

The act 1436, *cap.* 138, declares,

That all judges sall garre the assisoures swear in the making of their aith, quhen they are charged to assises, that they nouthar have tane, nor sall take meede nor buddes of ony partie; and gif onie sik be given, or hecht, or onie prayer maid before the giving out of the declaration and determination of the assisoures, the said assisoures sall openly reveale the buddes, gifts or prayers, and the quantitie and maner thereof, to the judge in plaine court.

The act 1587, *cap.* 88, declares,

That na officiar, nor officiares summound onie maa persones upon assises, in time cumming, nor fourtie-five persones, to be given in roll, subscribed be the partie purchaser of the saidis letters, or ane notar in his name; nor zit put out, nor put in the saidis roll, onie persones for gratitude or gude deede, under the paine to be called therefore, at particular diettes, before the justice or his deputes, and punished as commoun oppressoures to the death, and that dittay be

tane of all sik officiars, as hes used, or sall use the same, and they to be called and punished therefore, as said is.

The act 1587, *cap.* 90, declares,

That in all times cumming, the hail accusation, reasoning, writtes, witnesses, and uther probation and instruction quhatsumever of the crime sall be alledged, reasoned and deduced, to the assise, in presence of the partie accused, in face of judgement, and na utherwaies; and that all and quhatsumever lieges of this realme accused of treason, or for quhatsumever crime, sall have their advocates and procuratoures, to use all the lauchfull defenses, quhom the judge sall compell to procure for them, in case of their refuse, that the sute of the accuser be not tane *pro confesso*, and the partie accused, prejudged in ony sorte, before he be convicted be lauchfull tryall; and to the effect the saidis advocates and procuratoures may the mair freele and willingly do their office in the premisses, our said Soveraine Lord, with advise and consent foresaid, annullis, cassis and rescindis, all and quhatsumever actes of Parliament, and utheris statutes maid be him, or onie of his predecessoures of before, in contrair hereof.

The act 1587, *cap.* 91, declares,

That how-soone the hail persute, defences and answers thereto, ar fullie heard be the assise, gif onie of the saids assisoures hes ony doubt, quhairof they wald be resolved, that they propone the same openlie, in presence of the parties, in face of the judgement, before they passe out of judgement themselves; and immediately after that the said assise hes chosen their chancellor, the clerk of the justiciarie sall inclose the said assise them allane, or in an house be themselves, and suffer na person to be present with them, or repaire to them in ony waies, nather clerk nor uthers, under pretense of further information, resolving of onie doubt, or

onie uther cullour or occasion quhatsumever, but that the said house be halden fast, and na man present therein bot the saidis assisoures, and that they be not suffered to cum out of the said house for quhatsumever cause, or to continue the giving of their sentence to ane uther time, bot that they be inclosed, as said is, unto the time they be fullie agreed, and returne their answe be the mouth of the said chancellor to the judge: And our Sovereine Lord, with advice foresaid, decernis, declaris and ordainis, that gif ony of the saids accusers, informers of his Hienes' advocate, or uthers persones quhatsumever, pretend in one waies, in time cumming, to informe, sollist, reason, dispute, speak, or repaire to the said assise, after their remooving foorth of judgment, and inclosing of them in maner abone written, or utherwaies trangresse onie poynt of this present act; in that case, the partie accused sall be halden and pronounced cleane and innocent of the crimes and treasons then layed to his charge, and this present acte sall be ane sufficient warrand to all assisoures in criminal causes hereafter, to pronounce the partie accused, cleane and innocent, in case onie of the premisses beis contraveened.

The act 1685, *cap.* 29, .“ concerning citations be-
“ fore circuit courts,” is as follows :

Our Sovereign Lord, with advice and consent of the Estates of Parliament, do hereby ratifie and approve the practice of the circuit courts, in citing persons even for treason, upon porteous rolls by messengers, or sheriff-officers, without employing heraulds or pursevants, which because of the circumstances of the time, place and number of the pannels, cannot be done in circuit courts: And declare, That for the future, it shall be lawful to cite before circuit courts after that manner: It is always hereby provided, That in cases of treason, the messenger or sheriff-officer, and witnesses to the citation, shall be sworn upon the verity thereof.

The act 1693, *cap. 27*, declares,

That the haill accusation, reasoning, writs, witnesses, and other probation and instruction whatsoever of the crime, shall be alleged, reasoned, and deduced to the assize, in presence of the party accused, in face of judgment, and no otherwise: And it being fit and convenient for the lieges, that criminal trials, which are of so great import, be solemn and public, do therefore statute and ordain, That after the debate concerning the relevancy of criminal libels, dittayes, or exculpations made by the parties and their procurators are closed, that the Commissioners of Justiciary, and other criminal judges, shall advise the same with open doors, in presence of the pannel, and assize, and all others; and that no person or persons presume to speak, unless he be desired, or interrupt or disturb the court by noise, or any other manner of way, under the pain of being sent to prison, and fined at the judges' discretion, as they shall think fitting, any law or custom to the contrary hereof notwithstanding: Declaring always, That in cases of rape, adultery, and the like, the said commissioners may continue their former use and custom, by causing remove all persons, except parties and procurators, at the leading of the probation, as they shall see cause.

The act 1695, *cap. 4*, declares,

That in all time coming, the use and custom hitherto observed in that court of advocates or procurators their dictating, and the clerks writing of the defences, duplies, triplies, quadruples and so forth for the defender and pursuer be discharged and laid aside, and that in place thereof, his Majesty's advocate, or other advocates or procurators for the pursuer, with the advocates or procurators for the defender or pannel, debate the relevancy *viva voce*; and that after the said dispute *viva voce* is ended, then time be allowed to the

Lords and Judges of the said court, to the effect after mentioned, and that the King's advocate, or advocates, or procurators for the pursuer, do, within the space of forty-eight hours, give in to the clerk his information in writing, subscribed with his hand, and that advocates or procurators for the pannel may take it up and give in their answers in writing also under their hands, within other forty-eight hours, which information and answers shall be by the clerk recorded in the books of adjournal, in place of the foresaid written dispute formerly in use; and then at the advising, the said information and answers shall be first read in open court, and if any thing be found new on either side, and not noticed by the other party, the parties or judges shall point the same to the other party concerned, and hear both parties thereon *viva voce*, the clerk minuting, in presence of, and at sight of the said judges, what is so further debated, and then the said judges shall proceed to the advising: And his Majesty, with advice and consent foresaid, ratifies, approves and confirms the whole rights, powers and privileges of the said court of justice, and of the Lord Justice-General, Lord Justice-Clerk, and other judges, and all other members thereof: And it is further hereby statute and ordained, That in all capital crimes, wherein inferior criminal courts were hitherto restricted to try and execute within three suns, this time shall be hereafter restricted to the trial and sentence only, but not to the time of execution, which is hereby left to the discretion of the judge, not exceeding nine days after sentence.

The act 1704, *cap.* 5, "in favour of the five Lords Commissioners of Justiciary," declares,

That the five Lords of Justiciary are not provided by any special act to a salary for their service, nor to any certain fund for their payment, but hitherto have had only twelve hundred pounds Scots each *per annum*, paid to them by pre-

cepts from the Lords of Treasury upon the receivers : And their places being one of the most important of the nation, concerning both the lives and fortunes of her Majesty's lieges : Therefore the Queen's Majesty, with the advice and consent of the Estates of Parliament, doth fix, and hereby fixes the said salary to be twelve hundred pounds Scots yearly to each of the said five Lords, making in hail the sum of six thousand pounds Scots : And to the effect they may be the better secured therein, and out of a certain fund, that they may not be exposed to the inconveniency of undue payment, do hereby destinate and appoint, That the same shall, in all time coming, be paid to them, and their successors in that office, out of her Majesty's customs, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at Martinmas next, as for the first half year, and so forth termly thereafter : And for that end has dissolved, and hereby dissolves so much of the said customs from the crown, as does extend to six thousand pounds Scots yearly, for the end foresaid allenarly : And ordains the present receivers, collectors, and all others, in time coming, to pay to them, and each of them, and their successors in office, their said salary of twelve hundred pounds Scots yearly, established upon them by the force of this act, and that preferable to all other payments, and next to the twenty thousand pounds Scots formerly allocate upon the customs to the Lords of Session : And to the effect the same may be more effectually secured, do hereby extend this present act in their favours, with the same powers, privileges, and order of diligence by horning, &c. against all receivers, collectors, tacksmen, intrometers, and others mentioned and contained in the seventh act, second session of King Charles the Second's first Parliament, as fully and amply as thereby given in favours of the said Lords of Session, as if every particular clause were here *de verbo in verbum* exprest, and which shall be holden as here repeated, dispensing with the not doing the same, &c.

The act 8. of Queen Anne, *cap.* 14, declares,

That from and after the first day of May 1710, no person whatsoever shall be obligèd, by himself, his tenants, or servants, to attend the Lords of Justiciary, either in going to, or coming from the respective places where the circuit courts are held, except the sheriff, or his deputies, and their officers; and that no sheriff, by himself or his deputies, or his officers, be obligèd to attend the said Lords of Justiciary at any time or place out of the bounds of the respective county whereof such person is sheriff, except at the place, and during the time, where the several circuit courts of the respective districts shall be held.

And be it further enacted by the authority aforesaid, That from and after the said first day of May, no person whatsoever shall be obligèd to attend at the place where the circuit court is held, during such time as the said court shall continue there, except such person or persons who shall be summoned upon any grand or petty jury, or who shall be summoned or bound to give evidence in any matter or cause before the said court, or who shall be bound over to appear at such justice court, or such person or persons as shall make presentments, in order to trials before the said justices at their circuits: Provided, That when presentments are made by the justices of peace at their quarter-sessions, or at the yearly meetings in July and February after mentioned, it shall be lawful to the said justices to depute one or more of their number to attend in place of the whole; and except such other person or persons, who, by the duty of his or their offices or trusts, are bound to attend the said court.

And whereas by an act made in the sixth year of her Majesty's reign, intituled, An act for the rendering the union of the two kingdoms more entire and complete, it is, among other things, enacted, That the justices of the peace in Scotland may do, use, and exercise over all persons within their

several bounds, whatever doth appertain to the office and trust of a justice of peace, by virtue of the laws and acts of Parliament made in England before the Union, in relation to or for the preservation of the public peace; by virtue of which powers and privileges vested in them for the purposes aforesaid, they have sufficient authority to receive information concerning crimes committed within the respective counties, and to commit such offenders, or take security or recognizance, and to do other necessary acts for the effectual prosecution of the said crimes; in consequence whereof the old method of taking up dittay, and exhibiting informations against delinquents by the stress and porteous roll, as the same was grievous, is now become unnecessary: be it therefore enacted by the authority aforesaid, That from and after the first day of May, the said method of taking up dittay, and exhibiting information by the stress and porteous roll, shall be, and is hereby totally discharged and abolished to all intents and purposes whatsoever; any law or statute to the contrary in any way notwithstanding.

And be it further enacted by the authority aforesaid, That informations in order to making up of dittays, concerning crimes to be tried in the said circuits in Scotland, from and after the said first day of May next, shall be by presentments to be made by the justices of peace at their quarter-sessions, or upon informations to be taken by the sheriffs, stewarts, bailies of regalities, and their deputies, magistrates of boroughs, or other inferior judges and magistrates within the jurisdiction of the respective circuits, concerning such crimes as are to be tried before the Lords of Justiciary in their circuits in the months of July and February yearly; and the said justices of peace, at least two of them, are hereby required and authorized to meet at the said burgh of the respective shires within which they are justices, and at the ordinary place and hour of meeting, upon the twenty-first days of the said months of July and February respectively yearly,

being lawful days, or on the next lawful day thereafter, there to receive such informations as shall be offered, concerning matters criminal to be tried in the circuits, and to revise such informations as have been taken before the time of the said meetings, by two or more of the justices of the peace, otherwise than at their quarter meetings; and the said sheriffs, stewarts, bailies of regalities, and their deputies, magistrates of boroughs, and other inferior judges and magistrates respectively, shall meet upon the twenty-second days of the said months of July and February respectively yearly, being lawful days, or on the next lawful day thereafter, at the ordinary places and hour of their meetings, there to receive such informations as shall be offered concerning matters criminal to be tried in the circuits; and the said justices, sheriffs, stewarts, bailies of regalities, and their deputies, magistrates of burghs, and other inferior judges and magistrates, are hereby required and authorized to make up particular accounts of such criminal facts happening within their respective bounds as are to be tried before the respective circuits, containing the names and designation of the offenders, the facts committed, with the circumstances of time, place, and others that may serve to discover the truth; containing also the names and designations of the witnesses, and titles of such writs as are to be made use of at the trials; which informations are hereby appointed to be signed by the said justices, or at least two of them, and their clerk, or by the said sheriffs, stewarts, bailies of regalities, or their deputies and clerks, or by magistrates of boroughs, or other inferior judges or magistrates, and their clerks respectively; and being so signed, the respective clerks are also hereby required and authorized to transmit the same, together with such writs or other evidence or proof, as are to be made use of in the trials before the judges at the respective circuits, to the Lord Justice-Clerk, or his deputies at Edinburgh, at least forty days before the holding of the respective circuit

courts, that being given to her Majestie's advocate, or such as discharge that trust in Scotland, libels and indictments may be raised and executed against parties, assisers and witnesses, according to the former laws and custom.

And be it further enacted by the authority aforesaid, That the magistrates of such cities and boroughs, where the respective circuit courts are held, shall be obliged to attend the said Lords of Justiciary, during their abode in their respective cities and boroughs; and that they prepare convenient benches and places for the justices of the peace to sit on, and be present at the said courts; who are hereby declared to have and enjoy the same privileges in court, as the justices of peace now enjoy in England.

Provided nevertheless, That nothing in this act contained shall be construed to restrain her Majestie's advocate, or his successors in office, in her Majestie's name, or any person or persons, to inform and prosecute any criminal action or cause before the circuit court, in the same way and manner as is in use to be done before the Justiciary Court at Edinburgh, or to alter or innovate the method of returning jury-men or assisers by the sheriffs, upon precepts directed to them, as formerly.

The statute 11. of Geo. I. *cap.* 26, § 10, ordains,

That from and after the 1st day of June 1725, no sentence or judgment of any civil magistrate or court of judicature, importing a capital or corporal punishment, if pronounced in Edinburgh, or any other part of Scotland, to the southward of the Frith, or river of Forth, should (for the reasons in the said clause mentioned) be put in execution within less than thirty days after the date of such sentence; and if pronounced in any place to the northward of the said Frith, or river of Forth, should be put in execution in less than forty days after the date of such sentence: Provided nevertheless,

that nothing herein contained shall hinder or disable the courts of judicature, or any other civil magistrate within Scotland, to commit to goal, and detain in custody, in order to trial, or in order to the execution of sentences, as they by law might have done before the making of this act.

The statute 3. of Geo. II. *cap.* 32, *inter alia*, “ for
“ limiting the time for the execution of sentences im-
“ porting corporal punishments in that part of Great
“ Britain called Scotland,” declares,

That from and after the 24th day of June 1730, it shall and may be lawful to and for all the said magistrates and courts of judicature to put in execution any judgment or sentence, importing any corporal punishment less than death or dismembering, if given or pronounced in any part of Scotland to the southward of the Frith, or river of Forth, after the elapsing of eight days, and if given or pronounced in any other place, to the northward of the said Frith, or river of Forth, after the elapsing of twelve days, from and after the date of such judgment or sentence respectively.

Provided always, That it shall and may be lawful to and for the Judges of the Court of Justiciary, or any of them, who are hereby severally authorised and required, upon application made, and a reasonable cause shewn to him or them, by any person or persons who shall find themselves aggrieved by any such sentence or judgment, given or pronounced by any court of regality, or other inferior civil magistrate, or court of judicature, to stay all execution of such judgment or sentence, for the space of thirty days, to the end that such application may be made for redress, as is agreeable to the laws of that part of Great Britain called Scotland.

The statute 25. of Geo. II. *cap.* 37, “ for better
“ preventing the horrid crime of murder,” declares,

That besides death, the punishment shall be attended with some further mark of indignity. The rubric of the statute is as follows :

1. Murderers to be executed the next day but one after sentence ;
2. And their bodies to be delivered to Surgeons' Hall.
3. Sentence to be pronounced immediately.
4. The judge may stay the execution ;
5. And appoint the body to be hung in chains or anatomized.
6. Prisoner to be confined to some cell, and none but the gaoler, &c. to have access, without licence from the judge or sheriff.
7. The judge may relax these restraints.
8. Prisoner to be fed on bread and water except in case of sickness. Gaoler making default to lose his office and £. 20.
9. Death to rescue a murderer.
10. Transportation for seven years, for rescuing the body after execution.—See Hume's Com. I. 279.

The statute 21. of Geo. II. *cap.* 19, *inter alia*, abrogates the practice of taking down the evidence in writing in certain criminal prosecutions.

The statute 13. of Geo. III. *cap.* 31, requires Scots magistrates to indorse English warrants for the apprehension of criminals. But the offender must be transmitted for trial to the county where the crime was perpetrated. This act is quoted in the title "*Justice of Peace.*"

The act 54. of Geo. III. *cap.* 67, " to allow *viva voce* verdicts to be returned to the High Court and " Circuit Courts of Justiciary of Scotland in certain " cases ; and for allowing appeals to the Circuit Courts

“ of Justiciary in civil causes to a certain amount,” declares,

That notwithstanding any law or practice to the contrary, it shall hereafter be lawful for the said High Court of Justiciary and circuit courts, and at the discretion thereof respectively, to receive verdicts from juries by the mouth of their chancellors, when, upon a consultation in the jury box, the whole jurymen are agreed therein, although the said verdicts be not contained in writing, nor after the jury shall have been inclosed, and to cause the same to be taken down and recorded; and that in cases where juries retire from the presence of the court, and are inclosed in order to consider of and prepare their verdicts, it shall also be lawful for the said High Court of Justiciary and circuit courts, at the discretion of the said courts respectively, to receive such verdicts by the mouth of the chancellors of the said juries, in presence of the pannel, although the verdicts have not been made out in writing; provided the whole jurymen are agreed therein, and provided the judges are then sitting in court; so that the jury may straightway repair to the presence of the court, attended by an officer or officers thereof.

II. And be it enacted, That notwithstanding another trial be depending at the time, and even after another jury shall have been charged with a pannel or pannels, when a jury as aforesaid shall repair to the presence of the court in order to return their verdict, it shall be lawful for the said courts either to receive the verdict, in presence of the pannel, provided the whole jurymen are agreed therein, and to cause the same to be recorded, or to remand the jury, and order them to be re-inclosed, and to prepare a verdict in writing.

III. And be it enacted, That in any of the said cases provided for by this act, the interruption thereby occasioned in the proceedings of the said courts shall not be deemed any irregularity, or entitle any pannel or pannels under trial to

take any objection to the proceedings, and all trials conducted agreeably to any of the forms hereby authorised shall be held equally regular, and the judgments pronounced therein be equally effectual to all intents and purposes, as if they had been conducted according to the forms hitherto in use.

IV. Provided always, and be it enacted, That where verdicts shall not be received *viva voce* in any of the said cases above provided for, the forms hitherto established in the said courts shall be practised and observed in every respect as heretofore; and that those forms which regulate proceedings in cases of treason or misprision of treason shall also remain as heretofore by law established, any thing in this act to the contrary notwithstanding.

V. Recites the statute 20. of Geo. II. quoted in the title "*Appeal*," p. 56, and declares,

That it shall and may be lawful to and for any party or parties who might appeal to any circuit court in cases civil, where the subject matter of the suit did not exceed in value the sum of twelve pounds sterling, pursuant to the said recited act, henceforth to appeal in the manner thereby directed in cases civil, where the subject matter of the suit shall not exceed in value the sum of twenty-five pounds sterling.

The act 3. of Geo. IV. *cap.* 85, "to allow peremptory challenge of jurors in criminal trials in Scotland," was repealed by the statute 6. of Geo. IV. *cap.* 22, "to regulate the qualification and the manner of enrolling jurors in Scotland; and of choosing jurors on criminal trials there; and to unite counties for the purpose of trial in cases of high treason in Scotland," which declares,

"Whereas it is expedient that the qualification of per-

“sons in Scotland liable to serve as jurors should be fixed
 “and ascertained, and that the mode of making up rolls or
 “lists of persons in Scotland liable to serve as jurors should
 “be regulated, and that the mode of choosing jurors in
 “criminal trials there should be altered, and that provisions
 “should be made for uniting counties for the purposes of
 “trial in cases of high treason there:” May it therefore
 please your Majesty that it may be enacted, &c. That every
 man, except as herein-after excepted, being between the ages
 of twenty-one and sixty years, residing in any county or
 stewartry in Scotland, being qualified to serve as a juror in
 terms of an act passed in the sixth year of the reign of her
 Majesty Queen Anne, intituled, An act for settling and es-
 tablishing a Court of Exchequer in the north part of Great
 Britain called Scotland; *videlicet*, every such man, at the
 time of the trial on which he may be required to serve, ha-
 ving and being seised in his own right, or in the right of
 his wife, of lands or tenements, of an estate of inheritance,
 or for his or her life, within the county or shire, city or
 place, from whence the jury is to come, of the yearly value
 of five pounds at the least, or shall be then worth in goods,
 chattels and personal estate, the sum of two hundred pounds
 Sterling at least, shall be qualified and shall be liable to serve
 on juries in Scotland, before any court there, civil or crimi-
 nal, competent to try causes by jury.

II. Provided always, and be it enacted, That all Peers, all
 Judges of the Supreme Courts, including the Judge-Admi-
 ral and Commissaries of Edinburgh, all sheriffs and stewards
 of counties or stewartries, all magistrates of royal burghs, all
 ministers of the established church, and all other ministers of
 religion, who shall have duly taken and subscribed the oaths
 and declaration required by law, and whose place of meet-
 ing shall be duly registered, and all parochial schoolmasters,
 also all advocates practising as members of the faculty of ad-
 vocates, all writers to the signet practising as such, all soli-

citors practising before any of the supreme courts, all procurators practising before any inferior court, having severally taken out their annual certificates, all clerks or other officers of any court of justice actually exercising the duties of their offices, all gaolers or keepers of houses of correction, all professors in any university, all physicians and surgeons duly qualified as such, and actually practising, all officers in his Majesty's navy or army in full pay, all officers of customs or excise, all messengers at arms and other officers of the law, shall be and are hereby freed and exempted from being returned, and from serving upon juries.

III. And be it further enacted, That the sheriff of each county, and the stewart of each stewartry in Scotland, shall, on or before the first day of January 1826, make up a roll of persons within his county or stewartry respectively, who are qualified as aforesaid, and liable to serve as jurors; and the names and designations of all such persons shall be entered in a book, to be called "The General Jury Book," to be kept in the sheriff or stewart clerk's office of each county or stewartry, and to be open on all lawful days to the inspection and examination of any person who shall require such inspection, on payment of a fee of one shilling.

IV. And be it further enacted, That as soon as such roll or list of jurors, qualified as aforesaid, shall have been made up and inserted in the said General Jury-Book, the sheriff and stewart of every county and stewartry in Scotland shall select therefrom the names of all persons qualified to be special jurors, in terms of an act passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled, An act to facilitate the administration of justice in that part of the United Kingdom called Scotland, by the extending of trial by jury to civil causes; and such names so selected shall be entered in a book to be called "The Special Jury-Book," to be kept in the sheriff or stewart clerk's office of each county or stewartry, and to be open for inspec-

tion as herein directed, with regard to the General Jury-Book, and the persons whose names shall be entered in such Special Jury-Book, shall be liable to serve as special jurors in all civil causes ordered to be tried by special juries, and on all criminal trials as herein-after directed: Provided always, that the names of persons so selected as aforesaid for special jurors shall, notwithstanding hereof, remain in the said General Jury-Book.

V. Provided always, and be it enacted, That the sheriff of the county of Edinburgh, in entering the names of jurors, as well in the General as Special Jury-Book as aforesaid, shall divide the same into three separate parts, one containing the names of persons residing in the city of Edinburgh and its environs, in so far as the same are comprehended within the bounds of police, as defined by an act passed in the third year of the reign of his present Majesty, intituled, An act for watching, cleansing, and lighting the streets of the city of Edinburgh and adjoining districts, for regulating the police thereof, and for other purposes relating thereto; another part containing the names of those residing in the town of Leith and its environs, as comprehended within the bounds of the police thereof; and a third part containing the names of those residing in the rest of the county of Edinburgh; and that the sheriff of the county of Lanark shall in like manner divide the names of jurors, as aforesaid, into two parts, the one containing the names of persons residing in Glasgow, including Anderston, Gorbals, and the Calton, and the other containing the names of those residing in the rest of the county of Lanark.

VI. And be it enacted, That the sheriffs of Haddington and Linlithgow shall, on or before the eighth day of January 1826, transmit certified copies of the lists, both general and special, so made up by them, to the sheriff of Edinburgh; from which shall be taken the names of jurors when required, as directed by this act.

VII. And be it enacted, That when the attendance of jurors is required for trials before the High Court of Justiciary at Edinburgh, or before the Court of Exchequer, or Judge Admiral, or in the Jury Court when held in Edinburgh, notices, writs or precepts shall be issued from the said respective courts to the sheriff of Edinburgh, specifying the number of jurors required; and the said sheriff shall thereupon return a list taken from the said General Jury-Book, in the order in which they therein appear, subscribed by him, containing the number of persons required, which return, when made to the High Court of Justiciary or to the Judge-Admiral, where forty-five jurors are required, shall contain twenty-four for the city of Edinburgh, six for the town of Leith, six for the remainder of the county of Edinburgh, four for the county of Linlithgow, and five for the county of Haddington, or as near as may be in these proportions, according to the number required, more or less than forty-five: Provided always, that in all criminal trials one-third of the number required, or if the number required cannot be divided equally into thirds, a number as nearly as can be to a third, more or less, at the discretion of the sheriff, shall be persons qualified as special jurors, and shall be distinguished in the return accordingly; provided, that in the event of the list so to be taken from the General Jury-Book not being found to contain the said proportion of special jurors, the deficiency shall be supplied by names to be taken from the Special Jury-Book; and this rule shall in like manner be observed in regard to returns from all other counties.

VIII. And be it enacted, That when the attendance of jurors at the circuits is required, notice shall be given by the clerk of court to the sheriffs of the counties, or stewarts of the stewartries within the circuit, of the number of jurors required; and each sheriff or stewart shall thereupon return to the said clerk a list subscribed by him, taken from the General and Special Jury-Books aforesaid, containing the number of

persons so required ; which return, where forty-five jurors are required, shall contain ten for the county of Berwick, seven for the county of Peebles, eight for the county of Selkirk, twenty for the county of Roxburgh, thirty for the county of Dumfries, fifteen for the county of Kirkcudbright, ten for the county of Wigton, thirty-five for the county of Ayr, ten for the county of Renfrew, twenty-one for the city of Glasgow, Anderston, Gorbals and the Calton, nine for the rest of the county of Lanark, five for the county of Dumbarton, ten for the county of Bute, thirty-five for the county of Argyle, twenty-five for the county of Stirling, ten for the county of Clackmannan, ten for the county of Kinross, fifteen for the county of Perth, fifteen for the county of Fife, fifteen for the county of Forfar, ten for the county of Kincardine, twenty-five for the county of Aberdeen, ten for the county of Banff, six for the county of Elgin, six for the county of Nairn, eighteen for the county of Inverness, nine for the county of Ross and Cromarty, three for the county of Sutherland, and three for the county of Caithness ; and wherever a greater number than forty-five jurors shall be required, the numbers in the return aforesaid shall be increased according to the proportions above specified : Provided always, That it shall be competent for the Court of Justiciary, as circumstances may require, to alter these proportions by act of adjournal.

IX. And be it enacted, That in all criminal trials in any inferior court, the clerk of such court shall be furnished with names from the Jury-Books of the county in which the court is held, containing the number of persons required, one-third being persons qualified to act as special jurors.

X. Provided always, and be it enacted, That the sheriffs and stewarts in all returns of jurors made by them to any court whatsoever, shall take the names in regular order, beginning at the top of the lists in the said Jury-Books, in each of the counties and districts foresaid respectively, as required ; and as often as any juror shall be returned to them, they

shall mark, or cause to be marked, in the said General Jury Book of their respective counties or stewartries, and also in the Special Jury-Book in the case of special jurors, the date when any such juror shall have been returned to serve; and in all such returns they shall commence with the name immediately after the last in the preceding return, without regard to the court to which the return was last made, and taking the subsequent names in the order in which they shall have been entered, as herein directed, and so to the end of the lists respectively.

XI. And be it enacted, That the sheriff or steward of every county or stewartry in Scotland shall prepare, in the manner herein directed, new and correct lists of jurors, in such time as the same may be completed, and entered in books as aforesaid, to be deposited in the sheriff or steward clerk's office, before the first lists shall have been completely gone through; and so soon as the whole names contained in any of the former lists shall have been returned to serve as jurors, the sheriff or steward shall proceed to take the names of those required from the new lists so prepared, beginning at the top and proceeding regularly to the end, as herein directed; and as often as and immediately before any list shall have been completely gone through, a new list shall be prepared and entered in books as aforesaid, and be made use of in the manner herein directed.

XII. And be it enacted, That where a person shall by law be entitled to the privilege of having a majority of landed men for jurors on his trial, the sheriff or steward, when required, shall make a return of names of landed men, in the order in which such names appear in the books aforesaid, so that a majority of the jurors contained in such return shall be landed men.

XIII. And be it enacted, That the lists returned as herein directed by the sheriffs and stewarts to the clerks of court, and none other, shall be used for the several trials for which the same shall have been required.

XIV. And be it enacted, That every instance of wilful and unwarranted departure on the part of any sheriff from the provisions in this act in regard to the making up of lists and of returning of jurors to any court, shall subject such sheriff in a penalty of fifty pounds, to be recovered by summary complaint before the High Court or Circuit Court of Justiciary; one half of which penalty shall belong to his Majesty, and the other half to the party suing for the same: Provided always, that no irregularity in making up the lists as herein directed, or in transmitting the same, or in the warrant of citation, or in summoning jurors, or in returning any execution of citation, shall constitute an objection to jurors whose names shall be served on any person accused of any crime, reserving always to the court to judge the effect of an objection founded on any felonious act by which jurors may be returned to serve in any case contrary to the provisions of this act.

XV. And be it enacted, That it shall and may be lawful for the Lord Justice-Clerk, or any one of the Lords Commissioners of Justiciary, and they are hereby authorised and empowered, at any time to direct to be summoned as jurors to serve on any criminal trial in the High Court or Circuit Court of Justiciary, any such number of persons exceeding forty-five, as may be deemed necessary; and it is hereby provided, that the warrants for summoning jurors shall only require the signature of one of the said judges, and it shall not be necessary to annex a copy of the signature of such judge to the list of assize served on the accused.

XVI. And be it enacted, That it shall be lawful for each person on trial before any criminal court to challenge five of the jurors, and also for the prosecutor to challenge five of the jurors in all, for any one trial, without being obliged to assign any reason therefor; and which challenge shall be made when the name of each juror is drawn as herein directed, and shall not afterwards be allowed, and such challenge shall

of itself disqualify the person or persons challenged from serving as a juror or jurors on such trial ; Provided always, That of the five special jurors to be chosen, not more than two shall be allowed to be challenged by each person accused, or by the prosecutor : Provided always, that such challenges without reason assigned shall nowise deprive a person accused, or the prosecutor, of the right respectively competent to them to object to any juror or jurors on cause shewn, but declaring that if such objection shall be founded on the want of sufficient qualification as provided by this act, such objection shall only be proved by the oath of the juror objected to ; and it shall not be competent to take any objection to any juror after he shall have been sworn to serve.

XVII. And be it enacted, That in all criminal trials by jury, the number of jurors to be returned by the sheriffs and stewarts to the criminal court shall be forty-five, unless otherwise directed, as herein mentioned ; and the jurors for the trial of any case shall be chosen in open court, by ballot from the lists of persons summoned, and served upon the accused ; and for that purpose the clerk of court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up as nearly as may be, in the same shape, and the names of the special jurors shall be put together into one box or glass, and the remainder into another, and being respectively mixed, the clerk shall draw out the said pieces of parchment or paper one by one from both boxes or glasses, in the proportion of one from the box containing the names of the special jurors, and two from the other box ; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged, with or without cause assigned, and set aside, then such farther number shall be drawn until the number required for the trial shall be made out ; and the persons so drawn and

appearing, and being sworn, shall be the jury to try the accused, and their names shall be taken down and recorded in the minute-book kept by the clerk ; but providing that when challenges are made, and jurors set aside, their places shall be filled up with other names, by drawing by ballot as aforesaid from the box or glass containing the description of jurors challenged respectively: Provided, that where the accused is a landed man, and a return of jurors made accordingly, a majority of the jury for trial shall be taken by ballot from the list of landed men returned by the sheriff, as here-in directed, and the remainder from the list of jurors not special, subject always to challenge as aforesaid.

XVIII. And be it enacted, That the jurors chosen for any particular trial may, when that trial is disposed of, without any new ballots, serve on the trials of other persons accused ; provided such persons and the prosecutor consent thereto, and provided also, that the names of such jurors are contained in the list of assize served on the accused, and that such jurors are duly sworn to serve on each successive trial.

XIX. And be it further enacted, That the several courts foresaid shall respectively have power to excuse any one or more jurors from serving on any trial or trials, the grounds of such excuse being stated in open court.

XX. And be it enacted, That all verdicts in the High Court or Circuit Court of Justiciary, and in the Court of the Judge-Admiral, and of any inferior judge, whether the jury are unanimous or not, and whether upon a consultation in the jury-box, or after having retired and been inclosed, shall be returned by the mouth of the chancellor of the jury, unless when the court shall direct written verdicts to be returned ; and the same rules shall apply in regard to the receiving of such verdicts as are observed in the case of unanimous verdicts in the Courts of Justiciary: Provided always, That in all cases of verdicts being returned by the mouth of the chancellor of the jury, where the jury shall not be un-

animous in their verdict, the chancellor shall announce the same, so that an entry thereof may be made in the record; and provided also, that when in such case a jury is inclosed, none of the jurors shall be allowed to separate or hold communication with other persons, until their verdict shall have been returned in their presence by the mouth of their chancellor.

“XXI. And whereas in cases of high treason, and misprisions of high treason, a sufficient number of jurors for the grand and petty juries cannot be held in some counties in Scotland, and in others there is no suitable court-house or proper means for conducting trials in such cases:” Be it therefore enacted, That in all cases of high treason or misprision of high treason in Scotland, under any commission of oyer and terminer that shall be issued by his Majesty, the counties of Edinburgh, Haddington, and Linlithgow, shall be held to be one county, under the description of the county of Edinburgh, whereof the sheriff-depute of Edinburgh shall be held to be sheriff; the counties of Roxburgh, Berwick, Selkirk and Peebles shall be held to be one county, under the description of the county of Roxburgh, whereof the sheriff-depute of Roxburghshire shall be held to be sheriff; the county of Dumfries and the stewartry of Kirkcudbright shall be held to be one county, under the description of the county of Dumfries, whereof the sheriff-depute of Dumfriesshire shall be held to be sheriff; the counties of Ayr and Wigton shall be held to be one county, under the description of the county of Ayr, whereof the sheriff-depute of Ayrshire shall be held to be sheriff; the counties of Argyle and Bute shall be held to be one county, under the description of the county of Argyle, whereof the sheriff-depute of Argyleshire shall be held to be sheriff; the counties of Lanark, Dumbarton and Renfrew shall be held to be one county, under the description of the county of Lanark, whereof the sheriff-depute of Lanarkshire shall be held to be sheriff;

the counties of Stirling, Clackmannan and Kinross shall be held to be one county, under the description of the county of Stirling, whereof the sheriff-depute of Stirlingshire shall be held to be sheriff; the counties of Perth, Forfar and Fife shall be held to be one county, under the description of the county of Perth, whereof the sheriff-depute of Perthshire shall be held to be sheriff; the counties of Aberdeen, Banff and Kincardine shall be held to be one county, under the description of the county of Aberdeen, whereof the sheriff-depute of Aberdeenshire shall be held to be sheriff; the counties of Inverness, Ross and Cromarty, Elgin and Nairn, Sutherland and Caithness, and the stewartries of Orkney and Zetland, shall be held to be one county, under the description of the county of Inverness, whereof the sheriff-depute of Inverness-shire shall be held to be sheriff: And it is hereby provided and declared, That it shall and may be lawful for any such commission of oyer and terminer, to sit in any town or place in any of the several counties so held to be one county, whereof the county in which the treason or misprision of treason may have been committed is one, and there to inquire into and determine all treasons and misprisions of treason, committed in any of the several counties so held to be one county, in the same way as such commission might inquire into and determine any treasons or misprisions of treason committed in the place or county in which such commission may so sit; and upon precepts being issued by any such commission of oyer and terminer, to any of the foresaid sheriffs or their substitutes respectively of Edinburgh, Roxburgh, Dumfries, Ayr, Argyle, Lanark, Stirling, Perth, Aberdeen or Inverness, such sheriff or his substitute shall be entitled to require that certified copies of all lists of juries made up within the several counties of which he is to be held as sheriff be transmitted to him, and he shall thereupon return such a number of qualified persons to serve on grand and petit juries as shall be required pursuant to the

said commission ; and the said sheriffs shall in virtue of said precepts give notice to all sheriffs, justices of the peace, chief constables, ministers and officers of the said counties, to do and execute such things as shall be required of them ; for all which purposes, and for performing whatever else that may be required of them by the said commission, the warrant of any such sheriff or his substitute shall be equally good and effectual within the said several counties of which he is hereby declared to be sheriff, as if such warrant had applied only to the particular county over which the jurisdiction of such sheriff in other respects extends : Provided always, That nothing in this act contained shall be held to apply to trials of high treason or misprision of high treason, save and except in so far as relates to the union of counties hereinbefore made.

XXII. And be it enacted, That an act passed in the third year of the reign of his present Majesty, intituled, An act to allow peremptory challenge of jurors in criminal trials in Scotland, shall be held as repealed from and after the 1st day of January 1826, when this act, and the several clauses, provisions and regulations herein contained, shall commence and take effect.

This act is amended by 7. of Geo. IV. *cap.* 8, in so far as relates to the qualification of Special Jurors, which recites act 6. Geo. IV. *cap.* 22, and 55. Geo. III. *cap.* 42, and declares,

That every person residing within any county or stewartry in Scotland, who shall be infeft in and possessed of lands and heritages in any part of Scotland yielding the sum of L. 100 Sterling of real rent *per annum* or upwards at the time, and also every person residing within any county or stewartry in Scotland who shall be possessed of personal property to the amount of L.1000 Sterling or upwards, shall be qualified to serve as a special juror in Scotland, in-

clusive of and in addition to those persons qualified to serve as special jurors in terms of the aforesaid act passed in the 55th year of the reign of his late Majesty.

II. And be it enacted, that as soon as conveniently may be after the passing of this act, the sheriff of every county in Scotland shall select from the list of jurors contained in the General Jury-Book of the county whereof he is sheriff, the names of all persons qualified to be special jurors in terms of this act; and such names so selected shall be entered in the Special Jury-Book of such county as persons liable to serve as special jurors: Provided always, that, in making such selection, the sheriff shall take the names of such jurors in the order in which they stand in the said General Jury-Book, and shall enter the said names in the same order in the Special Jury-Book immediately after the names which shall have been entered in the said Special Jury-Book at the time of the passing of this act: And provided also, that in case the names of special jurors entered in the Special Jury-Book shall have been all returned to serve as jurors before the names contained in the General Jury-Book shall in like manner have been gone through, the sheriff in making returns of special jurors shall recommence to take the names from the top of the list entered in the Special Jury-Book, and shall so return the names in their regular order in which they stand in the said book, until new lists shall be prepared.

III. Declares, that the number of special jurors shall not exceed one-third of the number of common jurors: Provided that any juror qualified as special, but not entered, shall serve as a common juror.

IV. The names of jurors dying or becoming disqualified may be passed over.

V. This act and 6. of Geo. IV. *cap.* 22, to be construed together.

Provision is made for salaries to the judges by the act 26. of Geo. III. *cap.* 46, “for augmenting and “fixing the salaries of the Judges :—by 39. of Geo. III. *cap.* 110, amended by 39. and 40. of Geo. III. *cap.* 55, for a similar purpose :—by 48. of Geo. III. *cap.* 145, “for enabling his Majesty to grant annuities to the “Judges of the Courts of Session, Justiciary and Exchequer in Scotland, on the resignation of their offices :”—by 50. of Geo. III. *cap.* 31 :—And by 54. of Geo. III. *cap.* 94, “to grant additional annuities to “Judges of the courts, &c. who had resigned their offices before the last augmentation of salaries granted “to the judges of these courts.”

Baron Hume’s Commentaries.

JUSTICE OF PEACE.

A Justice of Peace is a magistrate invested with local jurisdiction, to enable him to take cognisance of, and to punish, all disturbances of the public peace within his district.

Although known in England at a much earlier period, the first appointment of justices in Scotland took place in virtue of the act 1609, *cap.* 7, which declares,

That in every schyre within this kingdome there shall be yearlie appoynted by his Majestie some godlie, wyse and vertuous gentlemen of good qualitie, moyen and report, making residence within the same, in sik number as the bounds of the schyre shall requyre, to be commissioners for keeping

his Majesties peace, to whom his Majestie, with advyce of the Lords of his privie counsell, shall give power and commission to oversee, try and prevent all sik occasions as may breed trouble and violence amongst his Majesties subjects, or forceable contempt of his Majesties authoritie and breach of his peace, and to command all persons in whom they shall see manifest intention to make trouble or disorder, either by gathering together of ydle and disorderlie persons, or by publict bearing or wearing of pistolets or other forbidden weapons, and sik other ryotous and swaggring behaviour, to binde themselves and finde caution under competent paines to observe his Majesties peace, and for their compareance before his Majesties Justice or Lords of his privie counsell, to underly sik order as shall be found convenient for punishing their transgressions or staying of troubles and enormities, and if need shall be, to requyre the duetiful and obedient subjects of the shyre to concurre with them in preventing all sik contempts and violences, or for taking or wairding of the wilfull and disobedient authors, committers and fosterers of these crymes and disorders under sik competent arbitrare paines as his Majestie and Lords of his privie counsell shall appoynt for the offenders, and sik of the countrie as being requyred shall not give their readie and afald concurrence to his Majesties commissioners in the premisses, whereby the ordinare magistrats and officiares within the shyres may be the better assisted, and their absence, employments or other impediments mair commodiouslie supplied, without derogation of their jurisdiction, or want of readie comfort and justice to the obedient subjects within the bounds thereof, ordeining also the saids commissioners to give true advertisement and information to the Lords of his Majesties privie counsell, Justice-General and his deputes, his Majesties thesaurer and other magistrats and officers whom it ef-feirs, of the names of sik faithful and unsuspect witnesses and assyzers to be summoned in all crymes and disorders

whilk shall happen to fall forth within the said shyres, as shall be knawn to be maist meet and able for tryell and probation of the same, and for eschewing that sik as are either aged, seikle, or unable to travell, or ignorant of the facts to be tried, be not unjustlie vexed or unnecessarlie drawne from their awne houses and affaires, for matters wherein they are not able to give any light.

The acts 1617, *cap.* 8, and 1661, *cap.* 38, extended the jurisdiction, and defined the powers of justices. Although these statutes are still regarded as containing the fundamental regulations on this subject, they imposed some restrictions which were removed at the Union by the act 6. of Queen Anne, *cap.* 6, and relative commission, so that justices of the peace in Scotland are now invested with the same powers for the preservation of the peace as in England.

As to eligibility for this office, there is one statutory disqualification in the act 6. of Geo. IV. *cap.* 48, § 27, which declares, that no solicitor or procurator in any inferior court in Scotland, or the partner of such person, shall continue, or be a justice of the peace, or act as such in any county in Scotland, while he or his partner shall continue in the business or practice of solicitor or procurator in any inferior court. This is a clause of the small debt act quoted below ; but it is a general disqualification, and not confined to proceedings under the small debt act.—Tait, p. 265, note.

The act 1633, *cap.* 25, being a ratification of all previous acts in favour of justices of the peace, declares as follows :

Attour his Majestie, and Estates foresaid, give full power, authoritie and commission to the Lords of his Majesty's pri-

vie council, to set down and impose penalties upon such of the justices of peace as shall not keep and observe the diets prefixed for their several and particular meetings, and with power likewise to the saids Lords of privie council to enlarge and amplifie the power and authoritie of the saids justices of the peace, if they shall finde it necessarie and expedient; and what they shall decreete and determine thereanent, finde and declare that the same shall have the force, strength and power of an act of Parliament.

The act 1685, *cap.* 16, "anent justices of peace," ratifies the above acts, 1617, 1633, and 1661, and declares,

And further, his Majesty gives full power, authority, and commission, to the said justices, to put the laws in execution against all who shall be guilty of conventicles, irregular baptisms and marriages, withdrawing from church ordinances, and other such disorders, in so far as they are not capital, conform to the laws made thereanent; and where the crime is capital, they are to secure the persons, and acquaint the sheriff, or other judge ordinary thereof: And it is declared, That in their proceedings against church irregularities, baptisms, marriages, and conventicles, the justices may proceed immediately without waiting any time after the crimes are committed, and their clerk is appointed to send information of their proceedings once in the quarter, to the clerks of the council, as they will be answerable. And for their further encouragement, his Majesty allows unto the said justices of peace, the fines of all, except heritors, which shall arise from these delinquencies judged by them, to be employed for explicating of their jurisdiction as they shall think fit, and for discovering of what the fines of heritors shall amount to. The clerks of these courts are hereby appointed to send a subscribed list of them to the Clerks of Exchequer, in the first week of November yearly, under the pain of depriva-

tion : And his Majesty, with advice foresaid, allows the justices to nominate their own clerks at their first meeting. At-tour, his Majesty, and Estates foresaid, give full power, authority and commission, to the Lords of his Majesty's privy council, upon the decease of any of the justices of peace, to nominate others in their place, and to set down and impose penalties upon such of the justices as shall not keep and observe the diets prefixed for their several and particular meetings, according to former acts, and an act made in this Parliament ; and with power likewise to the said Lords of privy council to enlarge and amplify the power and authority of the said justices of peace, if they shall find it necessary and expedient : And what the council shall decree and determine thereanent, find and declare, That the same shall have the force, strength and power of an act of Parliament. It is always declared, That sheriffs, stewarts, and bailies of bailiarries, regalities, and baronies, are to remain in the possession and exercise of their former rights, according to the laws of the kingdom, any thing in this act notwithstanding.

The act 1686, *cap.* 20, " anent nomination of clerks " to the justices," is in the following terms :

Our Sovereign Lord, and Estates of Parliament, considering, That by a clause in the 16th act of the last session of this current Parliament, anent justices of peace, the said justices are allowed to nominate their own clerks, which is a right and privilege belonging to the secretaries of state, the clerkships of the justices of peace being dependencies of the secretaries office ; therefore, his Majesty, with advice and consent of the Estates of Parliament, has repelled, cassed, and annulled, and hereby repells, casses and annulls the foresaid clause in the sixteenth act of the last session of this current Parliament, allowing the justices of peace to nominate their own clerks, and declares the same to have no force, strength nor effect from the beginning, and to be null and void in all time coming.

By the statute 53. of Geo. III. *cap.* 40, being an act "to explain so much of several acts passed in England and Scotland respectively, as empower justices of the peace to rate wages or set prices of work as artificers, labourers, or craftsmen,"—so much of the acts 1617, *cap.* 8, and 1661, *cap.* 38, "or of any other act of Parliament in force in Scotland, as authorises and empowers any justices of the peace or magistrates of cities and burghs to rate wages or fix prices of work for artificers, labourers, and craftsmen," is repealed. In practice, justices of the peace still continue to decide questions of wages between master and servant, arising out of voluntary contract. See title "Artificers." They also judge in questions of aliment to natural children.

Ersk. I. 4. 13. Note by Mr Ivory.

The act 4. of Geo. IV. *cap.* 34, "to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers and others," is in the following terms :

"Whereas an act was passed in the twentieth year of the reign of his Majesty King George the Second, intituled, C. 19
"An act for the better adjusting and more easy recovery of
"the wages of certain servants, and for the better regulation of such servants, and of certain apprentices; and another act was passed in the sixth year of the reign of his late Majesty King George the Third, intituled, An act for better regulating apprentices and persons working under contract; and also another act was passed in this present session of Parliament, intituled, An act to increase the power of magistrates in cases of apprenticeships; and it is expedient to extend the powers of the

“ said acts;” Be it therefore enacted, &c. That it shall and may be lawful, not only for any master or mistress, but also for his or her steward, manager or agent, to make complaint upon oath against any apprentice, within the meaning of the said before-recited acts, to any justice of the peace of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct or ill behaviour of any such apprentice; or if such apprentice shall have absconded, it shall be lawful for any justice of the peace of the county or place where such apprentice shall be found, or where such apprentice shall have been employed, and any such justice is hereby empowered, upon complaint thereof made upon oath, by such master, mistress, steward, manager or agent, which oath the said justice is hereby empowered to administer, to issue his warrant for apprehending every such apprentice; and further, that it shall be lawful for any such justice to hear and determine the same complaint, and to punish the offender by abating the whole or any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months.

II. And be it further enacted, That all complaints, differences and disputes which shall arise between masters or mistresses and their apprentices, within the meaning of the said before-recited acts, or any of them, touching or concerning any wages which may be due to such apprentices, shall and may be heard and determined by one or more justice or justices of the peace of the county or place where such apprentice or apprentices shall be employed, which said justice or justices is and are hereby empowered to examine on oath any such master or mistress, apprentice or apprentices, or any witness or witnesses, touching any such complaint, difference or dispute, and to summon such master or mistress to appear before such justice or justices at a reasonable time to be named in such summons, and to make such

order for payment of so much wages to such apprentice or apprentices, as, according to the terms of his, her, or their indentures of apprenticeship, shall appear to such justice or justices, under all the circumstances of the case, to be justly due (provided that the sum in question do not exceed the sum of ten pounds,) the amount of such wages to be paid within such period as the said justice or justices shall think proper, and shall order the same to be paid ; and in case of a refusal or non-payment thereof, such justice or justices shall and may issue forth his and their warrant, to levy the same by distress and sale of the goods and chattels of such master or mistress, rendering the overplus to the owners, after payment of the charges of such distress and sale.

III. And be it further enacted, That if any servant in husbandry, or any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer or other person, shall contract with any person or persons whomsoever, to serve him, her or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract, (such contract being in writing and signed by the contracting parties,) or having entered into such service shall absent himself or herself from his or her service before the term of his or her contract, whether such contract shall be in writing or not in writing, shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then and in every such case it shall and may be lawful for any justice of the peace of the county or place where such servant in husbandry, artificer, &c. shall have so contracted, or be employed or be found, and such justice is hereby authorised and empowered, upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant in husbandry, artificer, &c. shall have so contracted, or by his, her or their steward, manager

or agent, which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such servant in husbandry, artificer, &c. and to examine into the nature of the complaint; and if it shall appear to such justice that any such servant in husbandry, artificer, &c. shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor as aforesaid, it shall and may be lawful for such justice to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months, and to abate a proportional part of his or her wages, for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof to punish the offender by abating the whole or any part of his or her wages, or to discharge such servant in husbandry, artificer, &c. from his or her contract, service or employment, which discharge shall be given under the hand and seal of such justice gratis.

“ IV. And whereas it frequently happens that such masters, mistresses or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas, or at considerable distances from such parishes or places, and during such residence or occasional absences intrust their business to the management and superintendence of stewards, agents, bailiffs, foremen or managers, where such servants, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers or other persons and apprentices, are or may be subjected to great difficulties and hardships, and put to great expense in recovering their wages:” Be it therefore enacted, That in either of the said cases, it shall and may be lawful to and for any justice or justices of the county or place where such servant in husbandry, artificer, handicraftsman, miner, collier, keelman, pitman, glassman,

potter, labourer, or other person or apprentice shall be employed, upon the complaint of any such servant, artificer, &c. touching or concerning the non-payment of his or her wages, to summon such steward, agent, bailiff, foreman or manager, to be and appear before him or them at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint, in such and the like manner as complaints of the like nature against any master, mistress or employer are directed to be heard and determined in and by this and the before-recited acts, and also to make an order for the payment by such steward, agent, bailiff, foreman or manager, to such servant, artificer, &c. of so much wages as to such justice or justices shall appear to be justly due; provided that the sum in question do not exceed the sum of ten pounds; and in case of refusal or non-payment of any sum so ordered to be paid by such steward, agent, foreman, bailiff, or manager, for the space of twenty-one days from the date of such order, such justice or justices as aforesaid shall and may issue forth his or their warrant to levy the same by distress and sale of the goods and chattels of such master, mistress or employer, rendering the overplus to the owner or owners, or to such steward, agent, bailiff, foreman or manager, for the use of such master, mistress or employer, after payment of the charges of such distress and sale.

V. And be it further enacted, That every justice or justices of the peace before whom any complaint shall be made, in pursuance of the said before recited act made in the twentieth year of the reign of his late Majesty King George the Second, or of another act made in the thirty-first year of the reign of his said late Majesty, intituled, An act to amend an act made in the third year of the reign of King William and Queen Mary, intituled, "An act for the better explanation and supplying the defects of the former laws for the settlement of the poor," so far as the same relates

to apprentices gaining a settlement by indenture ; and also to empower justices of the peace to determine differences between masters and mistresses, and their servants in husbandry, touching their wages, though such servants are hired for less time than a year, shall and may order the amount of the wages that shall appear due to any servants in husbandry, artificers, labourers or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper ; and in case of refusal or non-payment thereof, shall and may levy the same by distress and sale, in manner directed by the said first-mentioned act ; and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of the said acts contained to the contrary in any wise notwithstanding.

VI. Provided always, and be it enacted, That nothing in this act contained shall extend to impeach or lessen the jurisdiction of the Chamberlain of the city of London, or of any other court within the said city, touching apprentices.

The act 15. of Geo. III. *cap.* 39, empowers justices of peace “ to administer oaths where any penalty is to be levied, or distress to be made in pursuance of any act of Parliament wherein the same is not expressly directed.”

The act 33. of Geo. III. *cap.* 55, authorises justices of peace “ to impose fines on constables, overseers, and other peace or parish officers for neglect of duty.”

The statute 1. of Geo. IV. *cap.* 37, “ to increase the power of magistrates in the appointment of special constables,” is as follows :

“ Whereas doubts have arisen whether any person or persons can be compelled to act as special constables, except

“ in any actual tumult, riot, or felony ; and whereas it is expedient that justices of the peace should have the power of compelling certain persons to act as special constables, not only in case of actual tumult, riot or felony, but also on the reasonable apprehension thereof, for the prevention of the same:” Be it enacted, &c. That from and after the passing of this act, in all cases where it shall be made to appear to any two or more justices of the peace, acting for any county, city, division, riding, or place, by the information on oath of five respectable householders of such county, city, division, riding or place, that any tumult, riot or felony has taken place, or is likely to take place, and may reasonably be apprehended, such justices may, and are hereby authorised to call upon, nominate, and appoint, by precept in writing under their hands, any householders, or other persons (not legally exempt from serving the office of constable,) residing within their respective divisions, or the neighbourhood thereof, to act as special constables, for such time, and in such manner as to the said justices shall seem fit and necessary for the preservation of the public peace, and for the prevention or suppression of any tumult, riot, or felony; and the said justices are hereby empowered to administer to such person so appointed, the usual oaths administered by law to all special constables.

II. And be it further enacted, That in case any person (not legally exempted as aforesaid,) so called upon, nominated and appointed by such justices as aforesaid, shall neglect or refuse to take upon themselves the office, and to act as such special constable, such person so neglecting or refusing shall be liable to such and the same fines, penalties, and punishments, as persons refusing to take upon themselves the office of constable are now by law subject to.

III. And be it further enacted, That it shall and may be lawful for the justices of the peace assembled at the general or quarter sessions holden for any county, city, division,

riding, or place, where special constables shall have been called out as aforesaid, to order and direct such reasonable allowances for trouble and expenses, to be made to any person or persons so called out by authority of this act, as to the said justices shall seem fit, which allowance the said justices may order the treasurer of such county, city, division, riding, or place, to pay to such persons as the said justices shall direct; and such treasurer shall, and he is hereby authorised and required, forthwith to pay the sum or sums of money so ordered and directed to be paid to the person empowered to receive the same, and such treasurer shall be allowed the same in his accounts.

IV. And be it further enacted, That the court before which any indictments may be tried under the provisions of this act, shall have the power to award reasonable costs of trial to such persons as may prefer the said indictments, and may order the treasurer of such county, city, division, riding, or place, wherein such indictment shall be tried, to pay the sum or sums of money so ordered, to such persons as the said court shall direct; and such treasurer shall, and he is hereby authorised and required forthwith to pay the sum or sums of money, so ordered and directed to be paid, to the persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts.

V. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded.

The act 59. of Geo. III. *cap.* 28, empowers magistrates to divide the court of quarter sessions.

The duties of justices of the peace in relation to highways, &c. planting, &c. game, vagrants, weights and measures, prisons, &c. are explained in these various titles. Besides these duties, however, there are

others, of which it is necessary to take special notice, viz. in reference to the customs, indorsing warrants of other magistrates for apprehension of offenders, and the small debt court.

I. CUSTOMS.

The act 49. of Geo. II. *cap.* 65, "for giving jurisdiction to justices of the peace," &c. declares,

That from and after the passing of this act, it shall and may be lawful for any two or more of his Majesty's justices of the peace for any county, riding, division, city, or liberty wherein the offence shall arise, or wherein the offender or offenders shall be found, to examine into, hear, and determine all prosecutions for penalties incurred by any offence against this or any act or acts now in force, or hereafter to be made relating to his Majesty's said revenue of customs; and the said justices are hereby authorised and required, upon information exhibited before them for the recovery of any such penalty or penalties, to summon the party accused, and upon his, her, or their appearance or default, to proceed to the examination of the matter of fact, and upon due proof thereof, either upon the voluntary confession of such party, or upon the oath of one or more credible witness or witnesses, (which oath the said justices are hereby empowered to administer,) to convict the offender or offenders in the said penalty or penalties; and in case of the non-payment thereof, the said justices are hereby authorised and required to cause the same, by warrant of distress and sale under their hands and seals, to be levied upon the goods and chattels of the said offender or offenders, and in default of

sufficient distress, to commit the said offender or offenders to any of his Majesty's gaols in the county wherein the offence shall have arisen, or wherein the offender or offenders shall have been found, there to remain for the space of six months, or until the said penalty or penalties shall be paid.

II. Provided always, and be it further enacted, That nothing in this act shall extend to, or be construed to extend to empower the said justices to examine into, hear, or determine any prosecution for such penalties as aforesaid, in any case wherein the same shall in the whole exceed the sum of fifty pounds, unless they shall be so empowered by any other act or acts of Parliament now in force or hereafter to be made.

“ III. And whereas doubts have arisen in proceedings
“ before justices of the peace for penalties or forfeitures in-
“ curred by offences against the laws relating to his Majes-
“ ty's revenue of customs, where such justices have issued
“ out summons for the appearance of the party against whom
“ such proceedings have been instituted, which summons hath
“ been left at the house or usual place of residence of such
“ party, whether the same should be deemed a good and
“ sufficient summons, and as legal and effectual a notice as
“ if the same had been personally served upon such party ;
“ for the removal of such doubts,” be it declared and en-
acted, That in all proceedings before any justice or justices
of the peace for any fine, penalty, or forfeiture incurred un-
der any act or acts of Parliament now in force, or hereafter
to be made relating to his Majesty's said revenue of customs,
every such summons so left as aforesaid, and directed to
such party by his, her, or their right or assumed name, is
and shall be (except where particular provisions are or shall
be made for summoning offenders, or for condemning sei-
zures made from persons unknown,) deemed to be as good
and sufficient a summons, and as legal and effectual a no-
tice, as if the same were personally served upon such party,

and as if the same were directed to such party, by his, her, or their proper name or names.

IV. Provided always, and be it further enacted, That where any party shall or may be convicted before any two or more of his Majesty's justices of the peace, in any penalty or penalties incurred by any offence against any act or acts relating to his Majesty's said revenue of customs, wherein no power of mitigation shall be given to the said justices, or where it shall be given not specifically by the same act or acts, but only by reference to some other law or laws, it shall and may be lawful for the said justices, in cases where upon consideration of the circumstances they shall deem it expedient so to do, to mitigate the payment of the said penalty or penalties, so as the sum to be paid by such party be not less than one-half of the amount of the penalty or penalties in which such party shall have been convicted.

V. Provided always, and be it further enacted, That where any such offender or offenders shall have been committed to any such gaol as aforesaid, for default of such distress as aforesaid, and shall there remain until the expiration of the period for which he, she, or they, shall have been committed, he, she, or they, shall be wholly discharged from the payment of such penalty or penalties, in respect whereof such warrant of distress hath been issued, to all intents and purposes, as if the full penalty or penalties had been paid by the said offender or offenders immediately upon his, her, or their conviction therein.

VI. Provided always, and be it further enacted, That no information or proceeding for any fine, penalty, or forfeiture incurred by any offence against any act or acts now in force or hereafter to be made, relating to his Majesty's said revenue of customs, shall be exhibited or instituted before any justice or justices of the peace after the expiration of six months from the time of committing the offence whereby such fine, penalty, or forfeiture, hath been incurred.

II. INDORSATION OF WARRANTS.

The act 13. of Geo. III. *cap.* 31, requires justices in Scotland to indorse any warrant for the apprehension of a criminal, that may have been granted in England. Section 2. provides, that where a person, guilty of a crime in Scotland, has fled to England, the justices in England shall co-operate with the Scottish authorities to secure his person.

The act 44. of Geo. III. *cap.* 92, “to render more
“easy the apprehending and bringing to trial offenders
“escaping from one part of the united kingdom to
“the other, and also from one county to another,” declares as follows :

III. “And whereas it may frequently happen, that felons
“and other malefactors, in that part of the united kingdom
“called Ireland, make their escape into that part of the united
“kingdom called Great Britain, as also that felons and other
“malefactors in that part of the united kingdom called Great
“Britain may make their escape into that part of the united
“kingdom called Ireland, whereby their offences often remain
“unpunished, there being no sufficient provision, by the laws
“now in force in Great Britain and Ireland respectively, for
“apprehending such offenders and transmitting them into
“that part of the united kingdom in which their offences
“were committed : For remedy whereof,” be it further enacted, That if any person or persons against whom a warrant shall be issued by any of the judges of his Majesty’s Court of King’s Bench, or any justice of oyer and terminer or gaol delivery, or any justice or justices of the peace or other person having authority to issue the same within Ireland, for any crime or offence against the laws in force in Ireland, shall escape, go into, reside, or be in any place in

England or Scotland respectively, it shall and may be lawful for any justice of the peace of the county, stewardry, riding, division, city, liberty, town or place, in England or Scotland respectively, whither or where such person or persons shall escape, go into, reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county, stewardry, riding, division, city, liberty, town or place, where such warrant shall be so indorsed, to execute the said warrant in the county, riding, division, city, liberty, town, or place, where it is so indorsed, by apprehending the person or persons against whom such warrant is granted, and to convey him, her, or them by the most direct way into Ireland, and before one of the justices of the peace of the county in Ireland, living near the place and in the county where he, she, or they shall arrive and land; which justice of the peace is hereby required to proceed with regard to such person or persons, as if the said person or persons had been legally apprehended in the said county in Ireland.

IV. "And, for remedy of the like inconveniency by the "escape into Ireland of persons guilty of crimes in England "or Scotland respectively;" be it further enacted, That from and after the 1st day of August 1804, if any person or persons against whom a warrant shall be issued by any of the judges of his Majesty's Court of King's Bench, or of the courts of great sessions in Wales, or any justice of oyer and terminer or goal delivery, or any justice or justices of the peace of any county, stewardry, riding, division, city, liberty, town, or place, within England or Scotland respectively, or other person having authority to issue the same within England or Scotland respectively, for any crime or offence against the laws of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the

united kingdom called Ireland, it shall and may be lawful for any justice of the peace of the county or place in Ireland, whither or where such person or persons shall escape, go into, or reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs' officers, constables, and other peace officers of the county or place in Ireland where such warrant shall be so indorsed, to execute the said warrant in the county or place in Ireland where it is so indorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way into England or Scotland respectively, and before one of the justices of peace of the county or stewartry, in England or Scotland respectively, living near the place and in the county where he, she, or they shall arrive and land, which justice of peace is hereby authorised and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewartry of England or Scotland respectively.

V. And be it further enacted, That the expense of removing prisoners as aforesaid to any place in England, Scotland and Ireland respectively, shall be repaid to the person defraying the same by the treasurer of the county in England or Ireland respectively, or by the sheriff or stewart depute or substitute of the county or stewartry in Scotland in which the crime was committed, the amount of such expense being previously ascertained by an account thereof verified upon oath before two of the justices of the peace of such county or stewartry, and allowed and signed by them; and such treasurer, sheriff, or stewart depute or substitute, shall be allowed such payments in their respective accounts.

This act was amended by the statute 45. of Geo. III. cap. 92.

The statute 48. of Geo. III. *cap.* 58, *inter alia*, authorises the execution in Scotland of certain warrants issued for offences committed in England.

And the statute 54. of Geo. III. *cap.* 186, “ for “ the more easy apprehending and trying of offenders “ escaping from one part of the united kingdom to “ the other,” recites the acts 13. Geo. III. *cap.* 31,— 44. of Geo. III. *cap.* 92,—and 45. Geo. III. *cap.* 92, and proceeds to declare,

That so much of the said last-recited act as enacts that it shall not be lawful for any judge or justice to indorse any warrant, unless the same shall appear to have issued, if in England or Ireland, upon some indictment found or information filed, or if in Scotland, upon some libel or criminal letters raised and passed under the signet of the Court of Justiciary, against the person or persons named in such warrant, or unless the same shall appear to have issued in respect of some capital crime or felony mentioned in such warrant; and that in all cases in which any warrant or certificate shall be required to be acted upon in any part of the united kingdom, other than that in which the same was originally issued, it shall not be lawful for any court, or any judge or justice, to proceed to enforce or act upon the same, until it shall be proved upon oath to such court, judge, or justice, that the seal, signet, and signature upon the same, are the seal, signet and signature respectively of the court, judge, or justice, whose seal, signet, and signature, the same respectively purport to be, shall be, and the same are hereby repealed.

II. And be it further enacted, That from and after the passing of this act, all warrants issued in England, Scotland or Ireland respectively, may and shall be indorsed and executed, and enforced and acted upon, in any part of the united kingdom, in such and the like manner as is directed

by the said first-recited act of the thirteenth year of the reign of his present Majesty, in relation to warrants issued or granted in England and Scotland respectively, as fully and effectually, to all intents and purposes, as if all the provisions of the said act were in this act severally and separately repeated and re-enacted and made part of this act, as to every part of the united kingdom, and as to all justices of the peace, sheriffs' officers, constables, or other officer or officers of the peace in Ireland, as well as in England and Scotland respectively.

III. And be it further enacted, That it shall be lawful for any judge of any of his Majesty's courts of record in Westminster, of the court of sessions in the county palatine of Chester, or of any of the courts of great sessions in Wales, or for any judge in any of his Majesty's courts of record in Dublin, to indorse any letters of second diligence issued in Scotland, for compelling the attendance of any witness or witnesses resident in England, Wales, or Ireland, upon any criminal trial in Scotland; and that such letters shall, upon such indorsement, have the like force and effect as the same would have in Scotland, and shall entitle the bearer thereof to apprehend the witness or witnesses mentioned therein, and to convey such witness or witnesses to Scotland, for the purposes of the trial or trials in respect of which such letters shall have been issued, without any tender of any expense or expenses of any such witness or witnesses; any thing contained in the said last-recited act of the forty-fifth year aforesaid to the contrary notwithstanding.

SMALL DEBT COURT.

The first institution of this useful court took place in virtue of the statute 35. of Geo. III. *cap.* 123, " for

“ the more easy and expeditious recovery of small debts,
 “ and determining small causes arising out of personal
 “ contract or obligation in that part of Great Britain
 “ called Scotland.”

Afterwards the statute 39. and 40. of Geo. III.
cap. 46, was passed for a similar purpose.

And, lastly, the statute 6. of Geo. IV. *cap.* 48, of
 alter and amend the above act 39. and 40. of Geo. III.
 placed this court on its present footing. It is in these
 terms :

“ I. Whereas the regulations introduced by the act made
 “ in the thirty-ninth and fortieth years of his late Majesty,
 “ intituled, An act for the more easy and expeditious recovery
 “ of small debts, and determining small causes, in that part
 “ of Great Britain called Scotland, have been found useful
 “ and beneficial to the public ; and it is expedient that the
 “ said act should be altered and amended, and that certain
 “ other and further regulations which experience has sug-
 “ gested for the improvement thereof should be introduced :”
 That from and after the first day of January next, the said
 last-mentioned act shall be, and the same is hereby repeal-
 ed, except as to such causes and complaints as may be
 brought under the authority of the said last-mentioned act
 before the said first day of January next, and then depend-
 ing ; all which causes and complaints shall be carried on to
 a conclusion, according to the rules prescribed by the said
 last-mentioned act, notwithstanding this act.

II. And be it enacted, That from and after the first day
 of January next, (which is hereby declared to be the com-
 mencement of this act,) it shall be lawful and competent for
 any two or more of his Majesty's justices of the peace, in that
 part of Great Britain called Scotland, within their respec-
 tive counties or stewartries, to hear, try and determine, as
 shall appear to them agreeable to equity and good consci-

ence, all causes and complaints brought before them concerning the recovery of debts, or the making effectual any demand, and that in a summary way, as more particularly herein-after mentioned : Provided always, That the debt or demand shall not exceed the value of five pounds sterling, exclusive of expenses.

III. And be it enacted, That all such causes shall proceed upon complaint agreeable to the form in schedule (A.) subjoined to the present act, stating shortly the origin of debt or ground of action, and concluding against the defender ; and the clerk of the peace or any deputy by him appointed, or, in case he shall fail to appoint one, the clerk to be appointed within the district, as hereinafter provided, shall adject to the said complaint, and on the same paper, a warrant signed by him, agreeable to the form in schedule (A.) subjoined to the present act : which warrant shall contain an authority to any constable or peace officer for summoning the defender to appear and answer at the next meeting of the justices of the peace in the district of the county or stewartry where the defender resides, or, where the meetings of the court are held weekly, then, in the option of the pursuer, at the second or third diet of court from the date of the warrant, the said diet of court not being sooner, in either case, than upon the sixth day after the date of citation, and also for summoning witnesses, at the instance of either party, to the same day and place : Provided always, That a copy of the said complaint and warrant, with the citation annexed, agreeable to the said schedule (A.) subjoined to this act, and also a copy of the account, document of debt, or state of the demand, shall be delivered by a constable or peace officer to the defender personally, or left at his dwelling place ; in which latter case, if the defender shall not appear at the diet of court to which he has been cited, he shall be cited a second time personally, or at his dwelling house or place of abode, upon the words *de novo* being either

subjoined to the original complaint, and signed by any one justice of the peace, or written in the procedure book kept by the clerk, and signed by the justices or the preses, to appear either at the next stated meeting, or at a meeting to be held by adjournment for that purpose, and fixed by the justices at the first diet, but which second meeting shall not be sooner than three days from the date of the first, with certification that if he shall fail to appear at the diet of court to which he is summoned by this second citation, he will be held as confessing the debt or justice of the demand; Provided that if the defender has been cited for the first time to a diet of court, not sooner than twelve free days from the date of the citation, it shall be lawful for the constable or peace officer, in case the defendant shall not have been personally found at the time of the first citation, to cite him a second time, either personally or at his dwelling place, to the same diet of court, on the authority of the original warrant, and without previously reporting an execution of the first citation of the court, but always under this condition and limitation, that such second citation shall not be given sooner than upon the sixth day after the date of the first citation, nor later than upon the sixth before the diet of court to which the defender is so cited for the second time; and in case the defender shall not appear at the diet to which he is so cited for the second time upon the same warrant, he shall be held as confessed, in the same manner as if he had been cited personally, or cited at his dwelling place upon a warrant *de novo*; and the constable or peace officer shall in all cases return an execution of citation signed by him, or shall appear and give evidence upon oath of his having duly cited the defender in manner aforesaid.

IV. And be it enacted, That where a constable or other peace officer shall be required by any party, whether pursuer or defender, to cite any persons as witnesses, he shall be obliged to lodge a written execution of every such citation

in the clerk's hands, at or before the diet of court to which the defender has been summoned, or otherwise to verify in court the execution of citation, as the justices may see fit; and if the witnesses cited, either upon the one part or the other, do not appear at the time and place to which they are cited, it shall be competent to the party or parties to apply for a new warrant to compel their attendance at the next stated or adjourned meeting, which warrant may require them to attend in order to give evidence, under a penalty not exceeding twenty shillings sterling, to be awarded by the justices of the peace in case of their not appearing, unless a reasonable excuse be offered and sustained, which penalty shall be payable to the party at whose instance the witness was cited, and may be recovered by him in the same form and manner as herein directed with regard to other small debts; or in the option of the justices, the witness so failing to appear after a second citation, and not sending a reasonable excuse which shall be sustained by the justices, may be imprisoned for a certain time in the county prison, not exceeding ten days: Provided, that the aforesaid penalty shall not be awarded or recoverable, or the witness be liable to the said imprisonment, unless the second citation shall have been given not later than the sixth day before the diet of court to which he has been cited.

V. And be it enacted, That when the parties shall appear, the said justices shall hear them *viva voce*, and examine witnesses upon oath, and also the parties by declaration or upon oath: Provided always that no prosecutor, solicitor or any person practising the law, shall be allowed to appear or plead for them, either *viva voce*, or by writing, nor shall any of the pleadings, arguments, minutes or evidence be taken down in writing, or entered on any record.

VI. And be it enacted, That if a defender who has been duly cited, whether personally, or by two citations left at his dwelling house or place of abode, shall not appear in court,

either by himself or by one of his family, or other person, not being in any case a legal practitioner or officer of court, whom the justices shall see reason, in the circumstances of the case, to hear on his behalf in the matter of the complaint, he shall be held as confessing the debt or justice of the demand, unless he shall by one of his family send an excuse which shall satisfy the justices that a delay ought to be granted; in which later case, or if the absence of witnesses, or any other good reason assigned, shall move the justices to adjourn the cause to the next stated meeting, or other day to be specially appointed, it shall be competent for them to make such adjournment, and the parties and witnesses shall be ordered then to attend.

VII. Provided farther, and be it enacted, That it shall be competent for the justices, if they shall see reason in the circumstances of the case for so doing, to allow a pursuer or defender to be heard in the matter of his complaint or defence by one of his family; or if the pursuer shall not be resident nearer than twenty miles from the place where the court is held, it shall be competent for the justices, if they shall see fit, to hear him by a person holding a written mandate or authority from him for that purpose, the said mandatory not being a procurator, solicitor or person practising the law.

VIII. And be it enacted, That where a decree has been pronounced in absence of the defender, it shall be competent for him, upon consigning the sum decerned for in the hands of the clerk, at any time before the days of the charge elapse, to obtain from the clerk a warrant signed by him, sisting execution till the next court day, and containing an authority to cite the pursuer and witnesses for both parties; and the clerk shall be bound to certify to the justices at their said next meeting, the application for rehearing and the sist granted, which warrant so issued being served by a constable, or other peace officer upon the pursuer, either per-

sonally or by two citations left at his dwelling-house or place of abode, in the manner provided in other cases by this act, shall be an authority for having the matter reheard at the next court day, (provided that the same shall not be sooner than the sixth day from the date of the personal citation given to the pursuer, or of the second citation left at his dwelling-house or place of abode; or if the meeting of the court shall be sooner than the sixth day from the date of such citation, then at the court day next following); and provided always, that it shall be competent for the justices to continue the sist granted in such cases from the first meeting of the court after the application for a rehearing has been made, to such time as may be necessary for the appearance of the parties in order to be reheard; and in like manner, where absolvitor has passed in absence of the pursuer, it shall be competent for him at any time within one calendar month thereafter, upon consigning two shillings and sixpence in the hands of the clerk, to obtain a warrant, signed by the clerk, for citing the defender and witnesses for both parties, which warrant, being served by a constable or other peace officer upon the defender, either personally, or by two citations left at his dwelling-place, in the manner provided in other cases by this act, shall be an authority for having the matter reheard at the next court day or court day following, as hereby provided in the case of a rehearing at the instance of the defender; the two shillings and sixpence so deposited by the pursuer being in every case previously paid over to the defender.

IX. And be it enacted, That in case it shall be proved to the satisfaction of the justices that the non-attendance of parties or witnesses has been occasioned by any failure of duty on the part of the constable or peace officer, it shall be in the power of the said justices to punish him by a fine to the poor, or by imprisonment, the fine not exceeding twenty shillings Sterling, or the imprisonment not exceeding ten

days, reserving to the party injured any claim and recourse competent to him by law against the said constable or other officer for damage which he may have sustained by such neglect or violation of duty as aforesaid.

X. And be it enacted, That the clerk or deputy-clerk shall keep a book wherein shall be entered the names and designations of the parties, and whether present in court, or absent at the calling of the cause, the nature and amount of the claim, and date of giving it in, the mode of citation, the several deliverances or interlocutory orders of the justices, and the final judgment or decree, with the date thereof, which last shall be signed by the justices present or by their preses if more than two are present, the said entries by the clerk being agreeable to the tenor of the schedule or form marked (B.) annexed to the present act, or with such addition to the said entries as the justices of the peace in the several counties shall authorise and appoint for the better and more regular dispatch of the proceedings before them; and a copy of the said decree containing warrant for arresting or pouding the effects of the defender, or for committing his person to prison, together with a particular note or statement of the expenses in those cases where expenses have been awarded, as the same may have been incurred and are authorised in this act, shall by the clerk be annexed to the complaint, and on the same paper with it the said copy of decree and warrant, being conformable to the schedule marked (A.) annexed to the present act; which copy of decree and warrant, being signed by the clerk or his deputy, and delivered to the party in whose favour the same is granted, shall be a warrant for execution after the expiration of ten free days from the date of pronouncing the decree, if a party against whom it shall have been given was personally present in court when it was pronounced, or had appeared by one of his family admitted to attend for him, or if he was not so present, the execution shall only proceed after a

charge of ten free days, to be given by the constable or peace officer, either by delivering a copy of the decree or judgment to the party personally, or leaving the same at his dwelling house or place of abode, to which charge the constable or officer shall make oath, if required.

XI. And be it enacted, That the said justices may, if they think proper, direct the sum or sums found due to be paid by instalments, weekly or monthly, according to the circumstances of the party found liable, and under such conditions or qualifications as they shall think fit to annex.

XII. And be it enacted, That the execution of the poinding by the constable shall be summary, by carrying the effects poinded to the nearest market town, or kirk town, or village, within the parish, and after getting the same duly appraised, in the manner to be regulated by an order of the justices for each county at their quarter sessions, selling them between the hours of eleven and one of the clock, at the cross, or most public place, after one hour's notice given by a crier, by public roup, to the highest bidder, but reserving to the justices at their quarter sessions, if they shall see fit, to appoint a different hour for the sale, not being earlier than that above mentioned, or a longer notice to be given of the time of selling, and the overplus of the price, if there shall be any after payment of the sums decerned for, and the expenses, if expenses are awarded, including what is allowed by this act for the poinding and sale, shall be returned to the owner, or if the effects are not sold, the same shall be delivered over at the appraised value to the creditor, to the amount of the debt and expenses, if expenses are awarded, including the allowance for poinding: Provided always, that in case the place of sale is not a market town, but only a kirk town, or village, the place and time of sale shall be advertised two days at least before the day of sale, at the door of the parish church, on Sunday after the forenoon service.

XIII. And be it enacted, That in all cases of execution,

by poindings or imprisonment, the constable or other officer to whom the execution is committed, shall, on or before the next court-day thereafter, make a return or report to the clerk of court, either in writing or verbally, as may be required by the justices, of the date and manner of the execution, the number of assistants employed, and the sum or amount, if any, recovered since the date of the decree; and in case of a poindings, shall farther state the value at which the goods were appraised, the place and times of sale, the charges paid for conveyance of goods and for warehouse-room where these charges were incurred, and the price for which the goods were sold, in cases where a sale was made; or if the execution was by imprisonment, he shall in his said report state the gaol in which the debtor was incarcerated, which particulars respectively, so reported by the constable or officer, shall be entered by the clerk either in the procedure-book, or other books to be kept for that purpose, and be laid before the justices at their meeting next after the said report shall have been made, and shall also be exhibited by him to any person desiring inspection of the same, for such fee as shall be allowed by order of the justices, not exceeding sixpence for each time of inspection.

XIV. And be it further enacted, That the decrees given by the said justices in any case competent to them by this act, shall not be subject to advocacy, nor to any suspension, appeal, or other stay of execution, excepting only in the case of consignation, as herein-before provided, for the purpose of a rehearing before the justices, nor shall be set aside or altered in an action of reduction before the Court of Session, on any other ground except that of malice and oppression on the part of the justices, nor shall any such action of reduction be at all competent after the expiration of one year from the date of the decree of the justices.

XV. And be it enacted, That in case of a reduction being

brought within that time, on the alleged ground of malice and oppression, the pursuer shall, before the summons of reduction is called, be obliged to find sufficient caution in the hands of the clerk of court, for payment of such expenses as may be awarded against him.

XVI. And be it enacted, That notwithstanding the provision of this act, which requires all causes and complaints under the same to be heard, tried, and determined, by two or more justices of the peace, nevertheless, in case no more than one justice shall be present at the time and place appointed for a district meeting, it shall be lawful and competent for the said justice, being then and there present, to hold a court for the purpose of calling the roll of causes, of pronouncing decrees in absence, receiving returns of the executions of citations, and granting warrants for citation *de novo*, but for no other purposes; which decrees in absence so pronounced, and warrants *de novo* issued, shall be equally valid and effectual, as if they had been granted and issued by two or more justices then and there present.

XVII. And be it enacted, That the following and no other or higher fees shall be allowed to the clerk and officers of court, viz.

XVIII. And be it further enacted, That an abstract of the said table of fees shall be printed on each complaint, and on each copy of complaint for service, agreeably to the form marked, annexed to the present act, or other form, to be settled by the justices of the peace; and a copy of the said table, signed by two of the justices and by the clerk, shall be suspended, and continued at all times in a patent situation in the clerk's office, and in every court-room or place for holding of courts under authority of this act; and the said fees shall be subject to modification by the justices in very small cases, or where one complaint is directed against two or more defenders.

XIX. And be it enacted, That if any clerk or depute-clerk of the peace, or any constable or other officer, shall exact or take from any party, in a case of small debt, any fee not expressly authorised by this act, or any higher rate or fee than is authorised hereby, the person so offending shall be liable to a penalty not exceeding, if he is a clerk or depute-clerk, the sum of five pounds for each offence, or if he is a constable or other officer, not exceeding the sum of twenty shillings for each offence; which penalties respectively shall be awarded by the justices of the peace, either at a quarter sessions or at a district meeting, on complaint, either written or verbal, from the party who has been aggrieved by such illegal exaction, and satisfactory proof thereof, and which penalties the justices shall direct to be paid either to the party complaining or to the poor, or partly to both, as they may see fit, reserving always to the said justices the power competent to them of farther punishing their officers by suspension or dismissal, for this as well as other acts of malversation in office.

XX. And be it enacted, That an account shall be kept by the clerk of court, of all fines awarded by the justices by virtue of this act; and all such fines shall, where the application of them is not otherwise provided for and directed by this act, be paid to the poor in such manner as the justices shall direct.

XXI. And be it enacted, That the justices of the peace for each county, in that part of Great Britain called Scotland shall have power at any meeting of the quarter sessions, to make suitable divisions of the county or stewartry, into districts where not already done, or to alter the divisions already made, within which the justices of the peace shall meet at such stated times and places, as the said justices at their quarter sessions shall fix as most convenient, in order to carry the purposes of this act into execution, and which

meetings may be adjourned, if necessary, to any other lawful day or days, to be held at the same place; and of such divisions into districts, and of the stated times and places of meetings so to be appointed, or of the alterations of such divisions or stated meetings, where alterations are necessary, the justices at their quarter sessions shall order due notice to be given to all concerned, by advertisement at the church doors of every parish in the county or stewartry, at least two Sundays previous to the first stated meetings so to be appointed or altered.

XXII. And be it enacted, That in case the clerk of the peace shall fail to attend, either personally, or by a sufficient deputy, in any of the said districts at the meetings appointed by the said justices, of which the said clerk of the peace has had due notice, the justices who shall attend at such district meeting or meetings shall, and they are hereby empowered, to name an interim clerk for that district, who shall be removeable by any subsequent quarter sessions, and another clerk may then be appointed by the said quarter sessions from time to time, as they shall see cause.

XXIII. And be it further enacted, That for the better regulating the proceedings of the said justices empowered to hear and determine the said causes, it shall and may be lawful to and for the justices, at their quarter sessions, from time to time, to make such rules and orders as they shall find to be necessary and most conducive for carrying into effect the provisions and purposes of this act, such rules and orders not being inconsistent with any of the express enactments or conditions herein contained, or otherwise contrary to law; and the said rules and orders having been made by the said justices at their quarter sessions, shall be in force and kept and observed by the said justices empowered to hear and determine the said causes, and their clerks and officers, and the suitors before them, until the same shall be

repealed or varied by the justices at their said quarter sessions, or by the Lords of Session or Justiciary at Edinburgh, or by the circuit courts of justiciary, on the application of any two or more justices of the peace.

XXIV. And be it enacted, That no person liable to be summoned by virtue of this act shall be exempt from the jurisdiction of the said justices on account of privilege, as being a member of any other court of justice.

XXV. Provided always, and be it enacted, That this act, or any thing herein contained, shall not extend to any debt or demand where the title of any lands, tenements, or hereditaments, or where any heritable right whatsoever, is brought in question, nor to any other debt, matter, or thing that shall or may arise upon or concerning the validity of any will, testament, or contract of marriage, although the same shall not amount to the sum of five pounds Sterling; nor to any debt for any money or thing won at or by means of any horse-race, cock-match, or any kind of gaming or play, or any debt or demand for or on account of any spirituous liquors, any thing herein contained to the contrary in anywise notwithstanding.

XXVI. And be it enacted, That no constable or other officer of the peace, to whom execution of the decrees and warrants of the justices in cases falling under the present act may be committed, shall be liable to any penalty, fine, or punishment for selling goods or effects under authority of the said decrees and warrants, by public sale or auction, although such constable or peace officer may not be licensed as an auctioneer; any thing in the act of nineteenth of George the Third, Chapter Fifty-Six, or in any other act or acts for regulating sales by public auction, or imposing duties thereon, to the contrary in anywise notwithstanding.

XXVII. And be it further enacted, That no solicitor or procurator in any inferior court in Scotland, or the partner of any such person, shall from and after the passing of this

act be capable to continue or be a justice of the peace, or act as such, in any county in Scotland, during such time as such solicitor, procurator or partner of any such person shall continue in the business or practice of solicitor or procurator in any inferior court.

With regard to complaints against justices and constables for things done in the performance of their duty, there are two statutes:—The act 24. of Geo. II. *cap.* 44, which does not extend to Scotland: see case of Duke of Douglas *v.* Lockhart, 18. Dec. 1753, reversed on appeal, and note to the fourth edition of Tait's Justice of Peace, p. 273: The other is the statute 43. of Geo. III. *cap.* 141, which does apply to Scotland: see case of Gibsons *v.* Murdoch & Eaton, 18. June 1817. It is in the following terms:

“ I. Whereas it is expedient that justices of the peace in
 “ Great Britain and Ireland respectively, who, by virtue of
 “ divers acts of Parliament in force in the united kingdom,
 “ are authorised and required to convict persons of sundry
 “ offences in a summary way, should be rendered more safe
 “ in the execution of such their duty;” Be it therefore enacted,
 That in all actions whatsoever which shall, at any
 time after the passing of this act, be brought against any
 justice or justices of the peace in the united kingdom of
 Great Britain and Ireland, for or on account of any conviction
 by him or them had or made, under or by virtue of any
 act or acts of Parliament in force in the said united kingdom,
 or for or by reason of any act, matter or thing whatsoever,
 done or commanded to be done by such justice or
 justices, for the levying of any penalty, apprehending any
 party, or for or about the carrying of any such conviction
 into effect, in case such conviction shall have been

quashed, the plaintiff or plaintiffs in such action or actions, besides the value and amount of the penalty or penalties which may have been levied upon the said plaintiff or plaintiffs, in case any levy thereof shall have been made, shall not be entitled to recover any more or greater damages than the sum of twopence, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration in the action wherein the recovery shall be had, and which shall be in an action upon the case only, that such acts were done maliciously, and without any reasonable and probable cause.

II. And be it further enacted, That such plaintiff shall not be entitled to recover against such justice any penalty which shall have been levied, nor any damages or costs whatsoever, in case such justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.

Stair, II. 3. 62. and III. 5. 29.—Ersk. *ut supra*.—
Hume, II. 38.

DECISIONS.

Sharp v. Maxwell, 11. July 1811, Dict. II. 508. — Bell v. Dundas, 4. Feb. 1752.—Watson v. Ramsay & Meek, 27. Jan. 1813, Justiciary.—Fisher v. Robertson & Smith, 14. Jan. 1815.—Hairgrieve & Donaldson v. Minister & Kirk-Session of Linton & Eckford, 13. July 1749.—Murray v. Turnbull, 19. Jan. 1797.

MAGISTRATES. See BURGH ROYAL.

MEMBER OF PARLIAMENT. See PARLIAMENT.

MINOR. See CURATORS.

MUIRBURN. See GAME.

OATH OF CALUMNY.

The purpose of an action in general is, either to enforce payment of a debt, or to vindicate some right that is unjustly withheld. But there may be other motives for legal proceedings. They may originate in a wish to injure the character, or to disturb the peace of the defender, under the pretext of following out some frivolous or pretended claim. To repress calumnious actions, the statute 1429, *cap.* 125, ordains,

That advocates and forespeakers in temporal courtes, and alsua the parties that they pleade for, gif they be present, in all causes that they pleade, in the beginning or he be heard in the cause, he sall sweare, that the cause he trowis is gud

and leill, that he sall pleade : And gif the principal partie be absent, the advocate sall sweare in the saule of him, after as is contained in their meters :

Illud juretur, quod lis sibi justa videtur.

Et si quæretur verum, non inficietur.

Nil promittetur, nec falsa probatio detur.

Ut lis tardetur, dilatio nulla petetur.

As applied to advocates, this act has long been in desuetude ; but, in regard to pursuers of actions, it is still in force.

ACTS OF SEDERUNT.

With regard to the terms of the oath, it is declared, by act of sederunt, 13. January 1692, " That in case any party require an oath of calumny upon an alledgeance proponed and found relevant for him, that he may require the party against whom the same is to be proven, to depone whether he does not know the same to be true ; so that he should not put the proposer to the necessity to prove the same : And if the party against whom any point or alledgeance is to be proven require the oath of calumny of the party proposing the same, the terms shall be, that he may inquire whether he knows the thing that he proposes is not true ? so that it were calumnious for him to insist therein : And the Lords declare, that a party is not holden to give an oath of calumny *in facto proprio et recenti*, seeing upon the matter the same resolves into an oath of verity."

Act of sederunt, 25. Dec. 1708, as to obligation of peers respecting oaths of calumny.

By act of sederunt, 1. Feb. 1715, § 6, " any party against whom a matter of fact shall be pleaded, may be compelled, without making oath, to confess or deny it : And, if it shall appear that he has denied it falsely, he is subjected

“ to all the expense to which the other party has been put
“ through his calumnious denial.”

Erskine, IV. 2. 16.—Stair, IV. 44. 15.—Bryson *v.*
Craw, 24. July 1760.

PARLIAMENT.

By the treaty of Union with England, it was settled, that Scotland should be represented in the Parliament of the united kingdom by sixteen peers and forty-five members delegated by the counties and burghs. This point was fixed by Articles XXII. and XXIII. of the treaty, which are in the following terms:

XXII. That by virtue of this treaty, of the peers of Scotland at the time of the Union sixteen shall be the number to sit and vote in the House of Lords, and forty-five the number of the representatives of Scotland in the House of Commons of the Parliament of Great Britain; and that when her Majesty, her heirs or successors, shall declare her or their pleasure, for holding the first or any subsequent Parliament of Great Britain, until the Parliament of Great Britain shall make further provision therein, a writ do issue under the Great Seal of the united kingdom, directed to the privy council of Scotland, commanding them to cause sixteen peers, who are to sit in the House of Lords, to be summoned to Parliament, and forty-five members to be elected to sit in the House of Commons of the Parliament of Great Britain, according to the agreement in this treaty, in such manner as by a subsequent act of this present session of the Parliament of Scotland shall be settled: Which act is hereby declared to be as valid, as if it were a part of, and en-

grossed in this treaty. And that the names of the persons so summoned and elected shall be returned by the privy council of Scotland, into the court from whence the said writ did issue. And that if her Majesty, on or before the first day of May next, on which day the Union is to take place, shall declare, under the Great Seal of England, That it is expedient, that the Lords of Parliament of England, and Commons of the present Parliament of England, should be the members of the respective Houses of the first Parliament of Great Britain for and on the part of England, then the said Lords of Parliament of England, and Commons of the present Parliament of England, shall be the members of the respective Houses of the first Parliament of Great Britain, for and on the part of England: And her Majesty may, by her royal proclamation under the Great Seal of Great Britain, appoint the said first Parliament of Great Britain, to meet at such time and place as her Majesty shall think fit; which time shall not be less than fifty days after the date of such proclamation: And the time and place of the meeting of such Parliament being so appointed, a writ shall be immediately issued under the Great Seal of Great Britain, directed to the privy council of Scotland, for the summoning the sixteen peers, and for electing forty-five members, by whom Scotland is to be represented in the Parliament of Great Britain; and the Lords of Parliament of England, and the sixteen peers of Scotland, such sixteen peers being summoned and returned in the manner agreed in this treaty; and the members of the House of Commons of the said Parliament of England, and the forty-five members for Scotland, such forty-five members being elected and returned in the manner agreed in this treaty, shall assemble and meet respectively in their respective Houses of the Parliament of Great Britain, at such time and place as shall be so appointed by her Majesty, and shall be the two Houses of the first Parliament of Great Britain: And that Parlia-

ment may continue for such time only, as the present Parliament of England might have continued, if the Union of the two kingdoms had not been made, unless sooner dissolved by her Majesty : And that every one of the Lords of Parliament of Great Britain, and every member of the House of Commons of the Parliament of Great Britain, in the first and all succeeding Parliaments of Great Britain, until the Parliament of Great Britain shall otherwise direct, shall take the respective oaths appointed to be taken, instead of the oaths of allegiance and supremacy, by an act of Parliament made in England, in the first year of the reign of the late King William and Queen Mary, intituled, An act for the abrogating of the oaths of supremacy and allegiance, and appointing other oaths ; and make, subscribe, and audibly repeat the declarations mentioned in an act of Parliament made in England, in the thirtieth year of the reign of King Charles the Second, intituled, An act for the more effectual preserving the King's person and government, by disabling Papists from sitting in either House of Parliament ; and shall take and subscribe the oath mentioned in an act of Parliament made in England in the first year of her Majesty's reign, intituled, An act to declare the alterations in the oath appointed to be taken, by the act intituled, An act for the further security of his Majesty's person and the succession of the crown in the Protestant line, and for extinguishing the hopes of the pretended Prince of Wales, and all other pretenders, and their open and secret abettors, and for declaring the association to be determined, at such time, and in such manner as the members of both Houses of Parliament of England are by the said respective acts directed to take, make and subscribe the same, upon the penalties and disabilities in the said respective acts contained : And it is declared and agreed, that these words, This Realm, the Crown of this realm, and the Queen of this realm, mentioned in the oaths and declaration contained in the aforesaid acts,



which were intended to signify the crown and realm of England, shall be understood of the crown and realm of Great Britain : And that in that sense, the said oaths and declaration be taken and subscribed by the members of both Houses of the Parliament of Great Britain.

XXIII. That the foresaid sixteen peers of Scotland, mentioned in the last preceding article, to sit in the House of Lords of the Parliament of Great Britain, shall have all privileges of Parliament which the peers of England now have, and which they, or any peers of Great Britain shall have after the Union ; and particularly the right of sitting upon the trials of peers : And in case of the trial of any peer in time of adjournment or prorogation of Parliament, the said sixteen peers shall be summoned in the same manner, and have the same powers and privileges, at such trial, as any other peers of Great Britain. And that in case any trials of peers shall hereafter happen, when there is no Parliament in being, the sixteen peers of Scotland, who sate in the last preceding Parliament, shall be summoned in the same manner, and have the same powers and privileges at such trials, as any other peers of Great Britain. And that all peers of Scotland, and their successors to their honours and dignities shall, from and after the Union, be peers of Great Britain, and have rank and precedence next and immediately after the peers of the like orders and degrees in England at the time of the Union, and before all peers of Great Britain of the like orders and degrees who may be created after the Union, and shall be tried as peers of Great Britain, and shall enjoy all privileges of peers, as fully as the peers of England do now, or as they, or any other peers of Great Britain may hereafter enjoy the same, except the right and privilege of sitting in the House of Lords, and the privileges depending thereon, and particularly the right of sitting upon the trials of peers.

The endurance of Parliament is limited to seven years, unless sooner dissolved by the King, by the statute 1. of Geo. I. *cap.* 38.

The statutes on this subject may be arranged into three classes :

1. Those relative to the qualification of members and of those persons entitled to vote at an election of a member.

2. Those which regulate the procedure at elections.

3. Statutory limitation of the personal privilege of members of Parliament.

I. QUALIFICATION.

The act 1425, *cap.* 52, declares, that all barons, prelates and freeholders should compare personally in Parliament.

The act 1427, *cap.* 101, declares, that small barons and freeholders need not come to Parliament.

The act 1429, *cap.* 130, declares, that freeholders or their attornies must be present at the sheriff's head courts.

The act 1457, *cap.* 75, declares, that no freeholders can be constrained to come personally to Parliament, unless they be of twenty pound worth of land.

The act 1503, *cap.* 78, declares, that those barons and freeholders, who are above a hundred merks' extent, must attend Parliament in person ; but that those within this extent may send procurators, unless their presence be specially required under the act.

The act 1540, *cap.* 71, declares, that all barons and freeholders must be personally present at the three head courts yearly.

The act 1587, *cap.* 113, declares, that the commissioners of small barons and freeholders shall have a vote in Parliament.

The act 1597, *cap.* 276, declares, that small barons should send to the Parliament commissioners with sufficient commissions.

The act 1661, *cap.* 35, is in the following terms :

The King's Majesty considering, That divers debates have formerly occurred, concerning the persons who ought and should have vote in the election of commissioners from the several shires of this kingdom to Parliament, and who are capable to be commissioners to Parliaments, and that it is necessar for the good of his service, that the same be cleared for the future, doth therefore, with advice and consent of his Estates of Parliament, statute, enact and declare, That beside all heritors who hold a fourty shillings land of the King's Majesty *in capite*, that also all heritors, liferenters and wodsetters holding of the King, and others who held their lands formerly of the bishops or abbots, and now hold of the King, and whose yearly rent doth amount to ten chalders of victual or one thousand pounds (all feu-duties being deducted) shall be, and are capable to vote in the election of commissioners of Parliaments, and to be elected commissioners to Parliaments, excepting alwayes from this act all noblemen and their vassals. And it being just, that those who shall be chosen and accordingly shall attend his Majesty's and the kingdom's service in Parliaments, have allowance for their charges; his Majesty doth therefore, with advice foresaid, modifie and appoint five pounds Scots of daily allowance to every commissioner from any shire, including the first and last dayes of the Parlia-

ment, together with eight dayes for their comming, and as much for their return, from the furthest shires of Caithness and Sutherland; and proportionally at nearer distances; and that the whole free-holders, heritors and liferenters, holding of the King and Prince, shall, according to the proportion of their lands and rents, lying within the shire, be lyable and obliged in the payment of the said allowance, excepting noblemen and their vassals. For payment of which, all execution of horning, poynding and quartering is to passe, as for raising of the excise, and that according as the time and dayes of the Parliament shall be attested under the Clerk of Register's hand. And because at this time some commissioners of shires have been put to extraordinary expences in providing of footmantles for the riding of the Parliament; it is hereby statute, That the commissioners shall be relieved of the prices thereof, to be given in under their hands; and that the prices of the footmantles be raised in the same way and by the same execution, with the daily allowance aforesaid; the commissioners alwayes, at the rising of each Parliament, making the footmantles forthcoming to the shire, to be disposed as they shall think fit.

The act 1681, *cap.* 21, fixes the qualification as it stands at present. It is in these terms :

Our Sovereigne Lord, considering the great delay in dispatch of public affairs in Parliament, and Convention of Estates, occasioned by the contraverted elections of commissioners for shires : for preventing whereof, and for clearing the orderly way of election of the saids commissioners in time coming : Therefore his Majesty, with advice and consent of his Estates of Parliament, statutes and ordains, That none shall have vote in the elections of commissioners for shires or stewartries, which have been in use to be represented in Parliament and Conventions, but those who at that time shall be publickly infest in property, or superiority, and

in possession of a fourty shilling land of old extent holden of the King or Prince, distinct from the feu-duties in feu-lands, or, where the said old extent appears not, shall be infest in lands lyable in public burden for his Majestie's supplies for four hundred pounds of valued rent, whether kirk-lands, now holden off the King, or other lands holding feu, waird, or blench off his Majesty, as King or Prince of Scotland, and that apprisers or adjudgers shall have no vote in the saids elections during the legal reversion; and that after the expiring thereof, the appriser or adjudger first infest shall only have vote, and no other appriser or adjudger coming in *pari passu*, till their shares be divided, that the extent or valuation thereof may appear; and that during the legal heretor having right to the reversion shall have vote: And likewise proper wodsetters, having lands of the holding, extent, or valuation foresaid, which rights to vote proceeding upon expired comprising, adjudication, or proper wodset, shall not be questionable, upon pretence of any order of redemption, payment, and satisfaction, unless a decreet of declaratour, or voluntar redemption, renunciation, or resignation be produced, and that appeirand heirs being in possession, by vertue of their predecessors' infestment, of the holding, extent and valuation foresaid, and likewise liferenters, and husbands for the freeholds of their wives, or having right to a liferent by the courtesie of the saids liferenters, claime their vote, otherwayes the fiar shall have vote, but that both fiar and liferenter shall not have vote, unless they have distinct lands, of the holding, extent, or valuation foresaid, but that no person infest for relief, or payment of sums, shall have vote, but the granters of the saids rights, their heirs, or successors: Likas his Majesty ordains the whole freeholders of each shire and stewartry, having election of commissioners, to meet and conveen at the head burghs thereof, and to make up a roll of all the free-holders within the same, whether lying within stewartries, not having commissioners,

or bailiaries of royalty, or regality, or without the same, upon the first Tuesday of May next to come, according as the same shall be instructed to be of the holding, extent or valuation foresaid, containing the names and designations of the fiars, liferenters, and husbands, having right to vote for the same, in manner above written, and expressing the extent, or valuations of the saids free-holders, with power to continue, or adjourn their meetings untill the said roll for elections be fully compleat: Likeas, The saids free-holders shall meet and conveen, at the head burghs of the saids shires and stewartries *respectivè*, at the Michaelmas head court yearly thereafter, and shall revise the said roll of election, and make such alterations therein, as have occurred since their last meeting, from time to time; which roll for election shall be insert in the sheriff, or stewart books, particularly appointed for that end, according as they shall be stated each Michaelmas court; and at the election of commissioners, either at the Michaelmas court, or at the calling of Parliament, or conventions, the saids free-holders shall meet and conveen at the head burgh of the shire, or stewartry in that rowm, where the sheriff or stewart court useth to be held, betwixt mid-day and two afternoon, which rowm shall be patent to them, and all others removed, but whom they call, and the first or second commissioner last elected, or in their absence the sheriff or stewart clerk shall ask the votes who shall preside, and who shall be clerk to the meeting; and in case any alteration have happened in the said roll of elections since the last meeting, the persons then coming to have right to vote shall be insert in the roll, and there shall no objection be admitted against any insert in the said roll as said is, but what shall be propounded before they begin to vote to election; and if the objectors shall not be cleared, and acquiesce, they shall take instruments containing their objections against the admitting to, or excluding any person from the foresaid roll: And it is hereby declared, that no

other objection shall be competent in Parliament or convention, but what shall be contained in the instruments taken, as aforesaid; and in case objections be made when a Parliament or Convention is not called, a particular diet shall be appointed by the meeting, and intimated to the parties contravening, to attend the Lords of Session, for their determination, who shall determine the same at the said diet summarily according to law, upon supplication without farther citation: And it is hereby declared, that horning for a civil cause, or non-residence, shall be no sufficient objection, but that the minority being instantly verified shall be a sufficient objection, or the not taking the test appointed by the sixth act of this present Parliament, which is hereby ordained to be subscribed by all the voters in presence of the meeting, before they proceed to the election, and recorded in the sheriff court books, and so returned with the commission to the Clerk of Register: And if the persons objected against shall appear at the Parliament, or convention, and instruct the right to vote, the objector shall pay their expences, and be farther fined in five hundred merks: And if the objection be sustained in Parliament, the objectors appearing shall have their expences, and the party objected against shall be fined in five hundred merks: And to the effect that sufficient advertisement may be given to all parties having vote in election, who are to elect at the calling of a Parliament, or Convention, the sheriffs and stewards are hereby ordained to make publication of the call and diet of the said Parliament, and Convention, and of the diet appointed for election, and that at the head burgh of the shire or stewartry, upon a mercat day betwixt ten and twelve in the forenoon; and also shall make the like intimation at each paroch kirk, on Sunday immediatly thereafter; which diets for election shall at least be twelve dayes before the meeting of Parliament, or eight dayes before the meeting of a Convention, that the commissioners elected may have sufficiency of time to keep

the diet of the Parliament or Convention : Likeas his Majesty, with consent foresaid, statutes and ordains, the whole heretors, liferenters, and wodsetters, within each shire and stewartry, to contribute for the charges of the commissioners thereof, according to their valuation, except only those who hold of noblemen, or bishops, or lands belonging to burrows royal in burgage, and also to the expences of the foot-mantles.

The act 1690, *cap.* 11, “ for an additional representation in Parliament of the greater shires in this “ kingdom,” ordains,

That in all Parliaments, meetings and conventions of estates to be holden henceforth and hereafter, the barons and freeholders of the shires after mentioned shall add to their former representation the number of Commissioners after express, viz. the shire of Edinburgh two, the shire of Haddingtoun two, the shire of Berwick two, the shire of Roxburgh two, the shire of Lanerk two, the shire of Dumfries two, the stewartry of Kirkcudbright one, the shire of Air two, the shire of Stirling one, the shire of Perth two, the shire of Aberdeen two, the shire of Argyle one, the shire of Fife two, the shire of Forfar two, and the shire of Renfrew one. And it is hereby declared, That this act shall take effect in the next session of this Parliament, and in all Parliaments and Conventions of Estates thereafter.

The act 12. of Queen Anne, *cap.* 6, declares,

That no conveyance or right whatsoever, whereupon infeofment is not taken one year before the date of the warrant for making out a new writ for such election, shall, upon objection made in that behalf, entitle the person or persons, so infeft, to vote or be elected at that election ; and that from and after the said day, it shall or may be lawful to or for any

of the electors present, suspecting any person or persons to have his or their estates in trust, and for the behoof of another, to require the preses of the meeting to tender the following oath to any elector ; and the said preses is hereby impowered and required to administer the same in the words following, viz.

I *A. B.* do, in the presence of God, declare and swear, That the lands and estate of _____ for which I claim to give my vote in this election, are not conveyed to me in trust, or for the behoof of any other person whatsoever ; and I do swear before God, That neither I, nor any person to my knowledge, in my name, or by my allowance, hath given, or intends to give, any promise, obligation, bond, back-bond, or other security, for redispensing or reconveying the said lands and estate, any manner of way whatsoever : And this is the truth, as I shall answer to God.

And in case such elector refuse to swear, and also to subscribe the said oath, such person or persons shall not be capable of voting, or being elected at such election.

Provided always, That notwithstanding such oath taken, it shall be lawful to make such other objections as are allowed by the laws of Scotland against such electors.

And be it further enacted and declared by the authority aforesaid, That no infeoffment taken upon any redeemable right whatsoever, (except proper wadsets, adjudications, or apprisings, allowed by the act of Parliament relating to elections in 1681,) shall entitle the person so infest to vote, or be elected at any election in any shire or stewartry ; and that no person or persons, who have not been inrolled and voted at former elections, shall, upon any pretence whatsoever, be inrolled or admitted to vote at any election, except he or they first produce a sufficient right or title to qualify him or them to vote at that election, to the satisfaction of the freeholders formerly inrolled, or the majority of them present ; and the returning officers are hereby ordained to make their

returns of the persons elected by the majority of the freeholders inrolled, and those admitted by them, reserving always the liberty of objecting against the persons admitted to, or excluded from the roll, as formerly.

And be it further enacted by the authority aforesaid, That all sheriffs of shires, and stewarts of stewartries, shall be obliged, under the pain of fifty pounds Sterling, one moiety whereof shall be to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to the person or persons who shall sue for the same, to be recovered before the Court of Session, by any action summarily, without abiding the course of the roll, to make the public intimations required by the laws of Scotland, at the several parish churches within their respective jurisdictions, at least three days before the diet of elections.

Provided always, That the right of apparent heirs in voting at elections by virtue of their predecessors' infeoffments, and the right of husbands by virtue of their wives' infeoffments, be and is hereby reserved to them, as formerly; any thing in this act contained to the contrary notwithstanding.

Provided also, That any conveyance or right, which by the laws of Scotland is sufficient to qualify any person to vote in the elections of members to serve in Parliament for shires or stewartries, and whereupon infeoffment is taken, on or before the first day of June, in the year of our Lord 1713, shall entitle the person or persons, so infest, to vote at the elections of members to serve in the next ensuing Parliament; any thing herein contained to the contrary notwithstanding.

Provided always, and it is hereby declared to be the true intent and meaning of this act, That no husbands shall vote at any ensuing election by virtue of their wives' infeoffments, who are not heiresses, or have not right to the property of the lands on account whereof such vote shall be claimed.

The statute 1. of Geo. I. *cap.* 26, "to disable any person from being chosen a member, or from sitting and voting in the House of Commons, who has any pension for any number of years from the Crown," declares,

That no person having any pension from the crown for any term or number of years, either in his own name, or in the name or names of any other person or persons in trust for him, or for his benefit, shall be capable of being elected, or chosen a member of, or for sitting or voting as a member of this present or any future House of Commons which shall be hereafter summoned.

And be it further enacted by the authority aforesaid, That if any person who shall have such pension, as aforesaid, at the time of his being so elected, or at any time after, during such time as he shall continue or be a member of the House of Commons, shall presume to sit or vote in that House, then, and in such case, he shall forfeit twenty pounds for every day in which he shall sit or vote in the said House of Commons, to such person or persons who shall sue for the same in any of his Majesty's courts in Westminster Hall; and the monies so forfeited shall be recovered by the person so suing, with full costs of suit in any of the said courts, by action of debt, bill, plaint, or information, in which no essoign, privilege, protection, or wager of law, shall be allowed, and only one imparlance.

By the statute 2. of Geo. II. *cap.* 2, no person convicted of wilful and corrupt perjury is capable of voting in any election of a member to serve in Parliament.

The act 19. of Geo. II. quoted on page 428 of Vol. I. under the title "*Episcopalians*," excludes certain persons who attend meeting-houses not sanctioned by law.

By the statute 21. of Geo. II. *cap.* 19, no sheriff or

stewart depute can be elected, or vote in the election of a member of Parliament.—See title “*Sheriff*.”

The statute 22. of Geo. III. *cap.* 41, “for better
“securing the freedom of election of members to serve
“in Parliament, by disabling certain officers employed
“in the collection or management of his Majesty’s re-
“venues from giving their votes at such elections,” de-
clares,

That no commissioner, collector, supervisor, gauger, or other officer or person whatsoever concerned or employed in the charging, collecting, levying, or managing the duties of excise, or any branch or part thereof; nor any commissioner, collector, comptroller, searcher, or other officer or person whatsoever concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof; nor any commissioner, officer or other person concerned or employed in collecting, receiving, or managing any of the duties on stamped vellum, parchment, and paper, nor any person appointed by the commissioners for distributing of stamps; nor any commissioner, officer, or other person employed in collecting, levying, or managing any of the duties on salt; nor any surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing, or receiving the duties on windows or houses; nor any postmaster, postmaster-general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the Post-office, or any part thereof; nor any captain, master, or mate of any ship, packet, or other vessel employed by or under the postmaster or postmasters-general, in conveying the mail to and from foreign ports, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in Parliament for any county, stewartry, city, borough, or cinque port, or for

choosing any delegate in whom the right of electing members to serve in Parliament, for that part of Great Britain called Scotland, is vested; and if any person, hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote during the time he shall hold, or within twelve calendar months after he shall cease to hold or execute any of the offices aforesaid, contrary to the true intent and meaning of this act, such votes so given shall be held null and void to all intents and purposes whatsoever, and every person so offending shall forfeit the sum of L. 100; one moiety thereof to the informer, and the other moiety thereof to be immediately paid into the hands of the treasurer of the county, riding, or division, within which such offence shall have been committed, in that part of Great Britain called England; and into the hands of the clerk of the justices of the peace of the counties or stewartries in that part of Great Britain called Scotland, to be applied and disposed of to such purposes as the justices at the next general quarter session of the peace to be held for such county, stewardry, riding, or division, shall think fit; to be recovered, by any person that shall sue for the same by action of debt, &c.; or by summary complaint before the Court of Session in Scotland, and the person convicted on any such suit shall thereby become disabled and incapable of ever bearing or executing any office or place of trust whatsoever under his Majesty, his heirs and successors.

II. Provided always, and be it enacted, That nothing in this act contained shall extend, or be construed to extend to any person or persons for or by reason of his or their being a commissioner or commissioners of the land-tax, or for or by reason of his or their acting by or under the appointment of such commissioners of the land-tax, for the purpose of assessing, levying, collecting, receiving, or managing the land-tax, or any other rates or duties already granted or im-

posed, or which shall hereafter be granted or imposed by authority of Parliament.

III. Provided also, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to any office now held, or usually granted to be held, by letters patent, for any estate of inheritance or freehold.

IV. Provided always, and be it enacted, That nothing herein contained shall extend to any person who shall resign his office or employment on or before the said 1st day of August 1782.

V. Provided also, and be it enacted, That no person shall be liable to any forfeiture or penalty by this act laid or imposed, unless prosecution be commenced within twelve months after such penalty or forfeiture shall be incurred.

This statute was amended by the act 37. of Geo. III. *cap.* 138, which declares,

“ That whereas great inconveniences have arisen, in that
“ part of Great Britain called Scotland, at the meetings for
“ elections of members to serve in Parliament, by the persons who are declared by the said act (22. Geo. III. c. 41.)
“ incapable of voting at such elections giving their votes for
“ the choice of preses or clerk to the freeholders, and on questions relative to the adjustment of the roll, not only at such
“ elections, but at other meetings of freeholders, whereby the
“ votes of such persons so incapacitated, although not actually
“ given for any member to serve in Parliament, yet may often
“ be decisive of such election ;” be it therefore enacted, That
no person or persons described in the said recited act, and thereby rendered incapable of voting in the election of members to serve in Parliament, shall be capable of voting at any election for the choice of a preses or clerk to the freeholders of any county in that part of Great Britain called Scotland, or on any questions relative to the adjustment of the roll of freeholders of any such county, not only at such elections, but at all other meetings of the freeholders of any such

county ; and if any person, hereby made incapable of voting, shall nevertheless presume to give his vote during the time he shall hold, or within twelve calendar months after he shall hold or execute, any of the offices mentioned in the said act, contrary to the true intent and meaning of this act, such votes so given shall be held null and void to all intents and purposes whatsoever ; and every person so offending shall forfeit the sum of one hundred pounds, one moiety thereof to the informer, and the other moiety thereof to be immediately paid into the hands of the clerk of the justices of the peace of the counties or stewartries in that part of Great Britain called Scotland, to be applied and disposed of to such purposes as the justices at the next general quarter sessions of the peace to be held for such county or stewartry shall think fit ; to be recovered by summary complaint before the Court of Session in Scotland ; and the person convicted on any such suit shall thereby become disabled and incapable of bearing or executing any office or place of trust whatsoever under his Majesty, his heirs and successors.

II. And be it further enacted, That if any person at an election for a member to serve in Parliament for any county, shall offer to vote in the election of preses and clerk, it shall and may be lawful for any freeholder to put the oath of trust and possession to him before giving his vote, in the same manner as is now practised after the preses and clerk are chosen.

III. Provided also, and be it enacted, That no person shall be liable to any forfeiture or penalty by this act laid or imposed, unless prosecution be commenced within twelve months after such penalty or forfeiture shall be incurred.

The statute 22. of Geo. III. *cap.* 45, “ for restraining any person concerned in any contract, commission, or agreement, made for the public service, from being elected, or sitting and voting as a member of the House of Commons,” declares,

That any person who shall, directly or indirectly, himself, or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, or commission made or entered into with, under, or from the commissioners of his Majesty's treasury, or of the navy or victualling-office, or with the master-general or board of ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the public service, or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract, or commission, which he or they shall have made or entered into, as aforesaid, any money to be remitted abroad, or any wares or merchandize to be used or employed in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the House of Commons during the time that he shall execute, hold, or enjoy any such contract, agreement, or commission, or any part or share thereof, or any benefit or emolument arising from the same.

II. And be it further enacted, by the authority aforesaid, That if any person, being a member of the House of Commons, shall, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, enter into, accept of, agree for, undertake, or execute, in the whole or in part, any such contract, agreement, or commission, as aforesaid, or if any person, being a member of the House of Commons, and having already entered into any such contract, agreement, or commission, or part or share of any such contract, agreement, or commission, by himself, or by any other person whatsoever in trust for him, or for his use or benefit, or upon his account, shall, after the commencement of the next session of Parliament, continue to hold, execute, or enjoy the same, or any part thereof, the seat of every such person in the House of Commons shall be, and is hereby declared to be void.

III. Provided always, and be it enacted, That nothing herein contained shall extend, or be construed to extend to any contract, agreement, or commission made, entered into, or accepted by any incorporated trading company, in its corporate capacity, nor to any company now existing or established, and consisting of more than ten persons, where such contract, agreement, or commission shall be made, entered into, or accepted, for the general benefit of such incorporation or company.

IV. Provided also, and be it enacted, That nothing in this act contained shall extend, or be construed to extend, to any contract, agreement, or commission made, entered into, or accepted before the passing of this act, the term whereof will expire in the space of one year from the time of making thereof.

V. Provided also, and be it enacted, That, where any contract, agreement, or commission has been made, entered into, or accepted, with a provision that the same shall continue until a year's notice be given of the intended dissolution thereof, the same shall not disable any person from sitting and voting in Parliament, until one year after the said notice shall be actually given for the determination of the said contract, agreement or commission, or till after twelve calendar months, to be computed from the time of passing this act.

VI. Provided also, and be it enacted, That nothing herein contained shall extend, or be construed to extend to any person on whom, after the passing of this act, the completion of any contract, agreement, or commission shall devolve by descent or limitation, or by marriage, or as devisee, legatee, executor, or administrator, until twelve calendar months after he shall have been in possession of the same.

VII. Provided also, and be it enacted, That any person who is now a member of the House of Commons, and holds and enjoys any such contract, agreement, or commission, a

aforesaid, may be discharged from the execution thereof, on giving twelve months' notice to the person or persons with, or from whom such contract, agreement, or commission is made, entered into, or accepted, of his desire that the same shall cease and determine ; and such contract, agreement, or commission, after the expiration of the term aforesaid, shall be null and void.

VIII. Provided also, That if any person, actually possessed of a patent for a new invention, or a prolongation thereof by act of Parliament, and having contracted with Government concerning the object of the said patent before the passing of this act, shall give notice of his intention to dissolve the said contract, the same shall be null and void from the time of giving such notice.

IX. And be it further enacted, by the authority aforesaid, That if any person, hereby disabled or declared to be incapable to sit or vote in Parliament, shall nevertheless be returned as a member to serve for any county, stewartry, city, borough, town, cinqueport, or place in Parliament, such election and return are hereby enacted and declared to be void : And if any person, disabled and declared incapable by this act to be elected, shall, after the end of this present session of Parliament, presume to sit or vote as a member of the House of Commons, such person, so sitting or voting, shall forfeit the sum of five hundred pounds for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same in any of his Majesty's courts at Westminster ; and the money so forfeited shall be recovered by the person or persons so suing, with full costs of suit, in any of the said courts, by any action of debt, bill, plaint, or information, in which no essoin, privilege, protection, or wager of law, or more than one imparlance shall be allowed, or by summary complaint before the Court of Session in Scotland : And every person against whom any such penalty or forfeiture shall be recovered by virtue of this act, shall

be from thenceforth incapable of taking or holding any contract, agreement, or commission for the public service, or any share thereof, or any benefit or emolument from the same in any manner whatsoever.

X. And be it enacted, That in every such contract, agreement, or commission to be made, entered into, or accepted as aforesaid, there be inserted an express condition, that no member of the House of Commons be admitted to any share or part of such contract, agreement, or commission, or to any benefit to arise therefrom ; and that, in case any person or persons, who hath or have entered into or accepted, or who shall enter into or accept any such contract, agreement, or commission, shall admit any member or members of the House of Commons to any part or share thereof, or to receive any benefit thereby, all and every such person and persons shall, for every such offence, forfeit and pay the sum of five hundred pounds, to be recovered, with full costs of suit, in any of his Majesty's courts of record at Westminster, by any person or persons who shall sue for the same, by any action of debt, bill, plaint, or information, in which no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed, or by summary complaint before the Court of Session in Scotland.

XI. Provided also, and be it enacted, That no person shall be liable to any forfeiture or penalty inflicted by this act, unless a prosecution shall be commenced within twelve calendar months after such penalty or forfeiture shall be incurred.

The act 41. of Geo. III. *cap.* 52, explained by the act 54. of Geo. III. *cap.* 16, was passed to declare " what persons shall be disabled from sitting and voting " in the House of Commons of the united kingdom " of Great Britain and Ireland." It was passed recently after the Union of Great Britain with Ireland, and seems to relate chiefly to Ireland.

The statute 41. of Geo. III. *cap.* 68, “ to remove
“ doubts respecting the eligibility of persons in holy
“ orders to sit in the House of Commons,” declares,

That no person having been ordained to the office of priest or deacon, or being a minister of the church of Scotland, is or shall be capable of being elected to serve in Parliament as a member of the House of Commons.

II. And be it further declared and enacted, That if any person, having been ordained to the office of priest or deacon, or being a minister of the church of Scotland, shall hereafter be elected to serve in Parliament as aforesaid, such election and return shall be void; and that if any person, being elected to serve in Parliament as a member of the House of Commons, shall, after his election, be ordained to the office of priest or deacon, or become a minister of the church of Scotland, then and in such case the seat of such person shall immediately become void; and if any such person shall, in any of the aforesaid cases, presume to sit or vote as a member of the House of Commons, he shall forfeit the sum of five hundred pounds for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same in any of his Majesty's Courts at Westminster; and the money so forfeited shall be recovered by the person or persons so suing, with full costs of suit, in any of the said courts, by any action of debt, bill, plaint or information, in which no essoign, privilege, protection or wager of law, or more than one imparlance, shall be allowed; and every person against whom any such penalty or forfeiture shall be recovered by virtue of this act, shall be from thenceforth incapable of taking, holding, or enjoying any benefice, living, or promotion ecclesiastical, and of taking, holding, or enjoying any office of honour or profit under his Majesty, his heirs or successors: Provided always, That nothing in this act contained shall extend, or be construed to extend, to

make void any election of a person to serve as a member of the House of Commons, which election shall have taken place before the passing of this act.

III. Provided also, and be it enacted, That no person shall be liable to any forfeiture or penalty inflicted by this act, unless a prosecution shall be commenced within twelve calendar months after such penalty or forfeiture shall be incurred.

IV. And be it further enacted, That proof of the celebration of divine service, according to the rites of the church of England, or of the church of Scotland, in any church or chapel consecrated or set apart for public worship, shall be deemed and taken to be *prima facie* evidence of the fact of such person having been ordained to the office of a priest or deacon, or of his being a minister of the church of Scotland, within the intent and meaning of this act.

II. PROCEDURE AT ELECTIONS.

The statute 1706, *cap.* 8, “ settling the manner of “ electing the sixteen peers and forty-five commoners “ to represent Scotland in the Parliament of Great “ Britain,” declares,

That the said sixteen peers who shall have right to sit in the House of Peers in the Parliament of Great Britain on the part of Scotland, by virtue of this treaty, shall be named by the said peers of Scotland whom they represent, their heirs or successors to their dignities and honours, out of their own number, and that by open election and plurality of voices of the peers present, and of the proxies for such as shall be absent, the said proxies being peers, and producing a mandate in writing duly signed before witnesses, and both the constituent and proxy being qualified according to law :

Declaring also, That such peers as are absent, being qualified as aforesaid, may send to all such meetings, lists of the peers whom they judge fittest, validly signed by the said absent peers, which shall be reckoned in the same manner as if the parties had been present, and given in the said list. And in case of the death, or legal incapacity of any of the said sixteen peers, that the foresaid peers of Scotland shall nominate another of their own number in place of the said peer or peers, in manner before and after mentioned. And that of the said forty-five representatives of Scotland in the House of Commons in the Parliament of Great Britain, thirty shall be chosen by the shires or stewartries, and fifteen by the royal boroughs, as follows, viz. One for every shire and stewartry, excepting the shires of Bute and Caithness, which shall choose one by turns, Bute having the first election; the shires of Nairn and Cromarty, which shall also choose by turns, Nairn having the first election; and in like manner, the shires of Clackmannan and Kinross shall choose by turns, Clackmannan having the first election. And in case of the death, or legal incapacity of any of the said members from the respective shires or stewartries above mentioned, to sit in the House of Commons, it is enacted and ordained, That the shire or stewartry who elected the said member shall elect another member in his place. And that the said fifteen representatives for the royal boroughs be chosen as follows, viz. That the town of Edinburgh shall have right to elect and send one member to the Parliament of Great Britain; and that each of the other burghs shall elect a commissioner in the same manner, as they are now in use to elect commissioners to the Parliament of Scotland: which commissioners and burghs, (Edinburgh excepted,) being divided in fourteen classes or districts, shall meet at such time and place within their respective districts, as her Majesty, her heirs or successors shall appoint, and elect one for each district, viz. The burghs of Kirkwall, Wick, Dor-

nock, Dingwall and Tayne, one; the burghs of Fortrose, Inverness, Nairn and Forress, one; the burghs of Elgin, Cullen, Banff, Inverury and Kintore, one; the burghs of Aberdeen, Inverbervie, Montrose, Aberbrothock and Brechin, one; the burghs of Forfar, Perth, Dundee, Cowper and St Andrew's, one; the burghs of Crail, Kilrennie, Anstruther Easter, Anstruther Wester, and Pittenweem, one; the burghs of Dysart, Kirkcaldie, Kinghorn and Burntisland, one; the burghs of Innerkeithing, Dumfermling, Queensferry, Culross and Stirling, one; the burghs of Glasgōw, Renfrew, Rutherglen and Dumbartoun, one; the burghs of Haddingtoun, Dumbar, Northberwick, Lawder and Jedburgh, one; the burghs of Selkirk, Peebles, Linlithgow and Lanark, one; the burghs of Dumfreis, Sanquhar, Annan, Lochmaban and Kirkcudbright, one; the burghs of Wigtoun, Newgalloway, Stranrawer and Whitehorn, one; and the burghs of Air, Irvine, Rothesay, Campbeltoun and Inverary, one. And it is hereby declared and ordained, That where the votes of the commissioners for the said burghs, met to choose representatives from their several districts to the Parliament of Great Britain, shall be equal, in that case, the president of the meeting shall have a casting or decisive vote, and that by and attour his vote as a commissioner from the burgh from which he is sent, the commissioners from the eldest burgh presiding in the first meeting, and the commissioners from the other burghs in their respective districts presiding afterwards by turns, in the order, as the said burghs are now called in the rolls of the Parliament of Scotland. And in case that any of the said fifteen commissioners from burghs shall decease, or become legally incapable to sit in the House of Commons, then the town of Edinburgh, or the district which choosed the said member, shall elect a member in his or their place: it is always hereby expressly provided and declared, That none shall be capable to elect or be elected for any of the said estates, but such as

are twenty-one years of age compleat, and protestant, excluding all papists, or such who being suspect of popery, and required, refuse to swear and subscribe the formula, contained in the third act, made in the eighth and ninth sessions of King William's Parliament, intituled, Act for preventing the growth of popery; and also declaring, That none shall be capable to elect or be elected to represent a shire or burgh in the Parliament of Great Britain for this part of the united kingdom, except such as are now capable, by the laws of this kingdom, to elect or to be elected as commissioners for shires or burghs to the Parliament of Scotland. And further, her Majesty, with advice and consent foresaid, for the effectual and orderly election of the persons to be chosen to sit, vote, and serve in the respective Houses of the Parliament of Great Britain, when her Majesty, her heirs, and successors shall declare her or their pleasure for holding the first, or any subsequent Parliament of Great Britain, and when for that effect a writ shall be issued out under the Great Seal of the united kingdom, directed to the Privy Council of Scotland, conform to the said twenty-second article, statutes, enacts and ordains, That until the Parliament of Great Britain shall make further provision therein, the said writ shall contain a warrant and command to the said Privy Council to issue out a proclamation in her Majesty's name, requiring the peers of Scotland for the time, to meet and assemble at such time and place within Scotland, as her Majesty and royal successors shall think fit, to make election of the said sixteen peers; and requiring the Lord Clerk-Register, or two of the clerks of session, to attend all such meetings, and to administer the oaths that are or shall be by law required, and to ask the votes; and having made up the lists in presence of the meeting, to return the names of the sixteen peers chosen, (certified under the subscription of the said Lord Clerk-Register, clerk or clerks of session attending,) to the clerk of the Privy Council of Scotland; and likewise,

requiring and ordaining the several freeholders in the respective shires and stewartries, to meet and convene at the head burghs of their several shires and stewartries, to elect their commissioners, conform to the order above set down; and ordaining the clerks of the said meetings, immediately after the said elections are over respectively, to return the names of the persons elected, to the clerks of the Privy Council; and lastly, ordaining the city of Edinburgh to elect their commissioner, and the other royal burghs to elect each of them a commissioner, as they have been in use to elect commissioners to the Parliament, and to send the said respective commissioners, at such times, to such burghs within their respective districts, as her Majesty and successors, by such proclamations, shall appoint; requiring and ordaining the common clerk of the respective burghs where such elections shall be appointed to be made, to attend the said meetings, and immediately after the election to return the name of the persons so elected, certified under his hand,) to the clerk of Privy Council; to the end that the names of the sixteen peers, thirty commissioners for shires, and fifteen commissioners for burghs, being so returned to the Privy Council, may be returned to the court from whence the writ did issue under the Great Seal of the united kingdom, conform to the said twenty-second article. And whereas, by the said twenty-second article, it is agreed, That if her Majesty shall, on or before the first day of Maynext, declare, That it is expedient the Lords and Commons of the present Parliament of England should be the members of the respective houses of the first Parliament of Great Britain, for and on the part of England, they shall accordingly be the members of the said respective houses, for and on the part of England; her Majesty, with advice and consent foresaid, in that case only, doth hereby statute and ordain, That the sixteen peers, and forty-five commissioners for shires and burghs, who shall be chosen by the peers, barons, and burghs, respectively, in

this present session of Parliament, and out of the members thereof, in the same manner as committees of Parliament are usually now chosen, shall be the members of the respective houses of the said first Parliament of Great Britain, for and on the part of Scotland: Which nomination and election being certified by a writ under the Lord Clerk-Register's hand, the persons so nominated and elected shall have right to sit and vote in the House of Lords, and in the House of Commons of the said first Parliament of Great Britain.

The statute 1707, *cap. 23*, “to make further provision for electing and summoning sixteen peers of Scotland to sit in the House of Peers in the Parliament of Great Britain; and for trying peers for offences committed in Scotland; and for the further regulating of voters in elections of members to serve in Parliament,” is in these terms:

Whereas by the two and twentieth article of the treaty of Union for uniting the two kingdoms of England and Scotland, ratified and confirmed by the respective Parliaments of each kingdom, it was, amongst other things, provided, That when her Majesty, her heirs or successors, should declare their pleasure for holding the first, or any subsequent Parliament of Great Britain, until the Parliament of Great Britain should make further provision therein, writs should issue under the Great Seal of the united kingdom of Great Britain, directed to the Privy Council of Scotland, commanding them to cause sixteen peers, who were to sit in the House of Lords, to be summoned to Parliament, in such manner as by an act of the then present session of Parliament of Scotland, was or should be settled; in which session of the Parliament in Scotland, an act was accordingly passed for that purpose, intituled, Act settling the manner of electing the sixteen peers and forty-five members to represent Scotland in the Parliament of Great Britain; which act was

afterwards confirmed by the Parliament of England, and declared to be as valid as if the same had been part of and engrossed in the said articles of Union; by which act it is, amongst other things, provided and enacted, That the sixteen peers who should have a right to sit in the House of Peers in the Parliament of Great Britain, on the part of Scotland, by virtue of the said treaty, should be named by the said peers of Scotland, whom they represent, their heirs or successors to their dignities and honours, out of their own number, and that by open election and plurality of voices of the peers present, and of the proxies for such as should be absent, the said proxies being peers, and producing a mandate in writing, duly signed before witnesses, and both the constituent and proxy being qualified according to law; and that such peers as were absent being qualified, as aforesaid, might send to all such meetings a list of the peers whom they judged fittest, validly signed by the said absent peers, which should be reckoned in the same manner as if the parties had been present, and given in the said list; and in case of the death or legal incapacity of any of the said sixteen peers, that the aforesaid peers of Scotland should nominate another of their own number in place of the said peer or peers in manner as therein is mentioned: And it was thereby further enacted, That until the Parliament of Great Britain should make further provision therein, the said writs so to be issued should contain a warrant and command, to command the said Privy Council to issue out a proclamation in her Majesty's name, requiring the peers of Scotland for the time to meet and assemble at such time and place within Scotland, as her Majesty and her royal successors should think fit, to make election of the said sixteen peers, and requiring the Lord Clerk-Register, or two of the clerks of session, to attend all such meetings, and to administer the oaths as were or should be by law required, and to ask the votes; and having made up the list in presence of the meet-

ing, to return the names of the sixteen peers chosen, certified under the subscription of the said Lord Clerk-Register, clerk or clerks of session attending, to the clerk of the Privy Council of Scotland, to the end that the names of the sixteen peers being so returned to the Privy Council might be returned to the court from whence the writ did issue, under the Great Seal of the united kingdom, conform to the said twenty-second article : And whereas by an act of this present session, intituled, An act for rendering the Union of the two kingdoms more entire and complete, it is declared and enacted, That from and after the 1st day of May 1708, the Privy Council of Scotland shall cease and determine, whereby it is become necessary that some further provision should be made for the electing and returning the said sixteen peers that are to sit in the House of Peers in the Parliament of Great Britain, pursuant to the said treaty ; Be it therefore enacted, &c. That at all times hereafter when her Majesty, her heirs and successors, shall declare her or their pleasure for summoning and holding any Parliament of Great Britain, that in order to the electing and summoning the sixteen peers of Scotland, a proclamation shall be issued under the Great Seal of Great Britain, commanding all the peers of Scotland to assemble and meet at Edinburgh, or in such other place in Scotland, and at such time as shall be appointed in the said proclamation, to elect by open election the sixteen peers to sit and vote in the House of Peers in the Parliament of Great Britain, in such manner as by the before-recited act and herein after is appointed.

And be it further enacted by the authority aforesaid, That every proclamation issued for the purpose aforesaid, shall be duly published at the market-cross at Edinburgh, and in all the county towns of Scotland, five and twenty days at the least before the time thereby appointed for the meeting of the peers to proceed to such election.

And be it further enacted by the authority aforesaid, That

all the peers who meet on such proclamation, shall, before they proceed to the election, and in presence of the peers assembled for such election, take the respective oaths.

And that such peers that live in Scotland, but shall not be present at such meeting so appointed, may take the said oaths, and make and subscribe the said declaration in any sheriff's court in Scotland; and every sheriff, or his deputy, before whom such oaths, and such declaration shall be so made, subscribed and repeated, shall and is hereby required to return the original subscription of such oath and declaration, signed by the peer who took the same, and make a return in writing under his hand and seal to the peers so assembled, of such peer's taking the said oaths, and making and subscribing the said oath and declaration; and such peer shall be thereby enabled and qualified to make a proxy, or to send a signed list, containing the names of the sixteen peers of Scotland, for whom he giveth his vote; and such of the peers of Scotland, as at the time of issuing such proclamation reside in England, may take and subscribe the said oaths, and make, repeat, and subscribe the said declaration in her Majesty's High Court of Chancery in England, her Majesty's Court of Queen's Bench, Common Pleas, or Court of Exchequer in England, which being certified by writ to the peers in Scotland at their meeting, under the seal of the court where such oath and declaration shall be made, repeated and subscribed, shall be sufficient to entitle such peer to make his proxy, and to send a signed list as aforesaid; and in case any of the said peers of Scotland, who at any time before the issuing of such proclamation, have taken the said oaths, and made and subscribed the said declaration in England or Scotland, to be certified, as aforesaid, and if taken in Parliament, to be certified under the Great Seal of Great Britain, shall at the time of issuing such proclamation be absent in the service of her Majesty, her heirs or successors, such peer may make his proxy, or send a signed list.

Provided always, and be it enacted by the authority aforesaid, That such peers of Scotland as are also peers of England, shall sign their proxies and lists by the title of their peerage in Scotland.

And be it further enacted by the authority aforesaid, That no peer shall be capable of having more than two proxies at one time.

And be it further enacted by the authority aforesaid, That at such meeting of the peers, they shall all give in the names of the persons by them nominated to sit and vote in the House of Peers in the Parliament of Great Britain; and the Lord Clerk-Register, or two of the Principal Clerks of the Session, appointed by him to officiate in his name, shall, after the election is made and duly examined, certify the names of the sixteen peers so elected, and sign and attest the same in the presence of the peers; which certificate so signed and attested shall, by the Lord Clerk-Register, or two of the Principal Clerks of the Sessions, be returned into her Majesty's High Court of Chancery of Great Britain, before the time appointed for the meeting of the Parliament.

And be it further enacted by the authority aforesaid, That the peers shall come to such meetings with their ordinary attendants only, according to and under the several penalties inflicted by the several laws and statutes now in force in Scotland, which prescribe and direct with what numbers and attendants the subjects there may repair to the public courts of justice.

And be it further enacted by the authority aforesaid, That it shall not be lawful for the peers so assembled and met together for the electing sixteen peers to sit and vote in the House of Peers in the Parliament of Great Britain, to act, propose, debate, or treat of any other matter or thing whatsoever, except only the election of the said sixteen peers; and that every peer who shall at such meeting presume to propose, debate or treat of any other matter or thing con-

trary to the direction of this act, shall incur the penalty of præmunire expressed in the statute of the sixteenth year of King Richard the Second.

And be it further enacted by the authority aforesaid, That all and every matter and things for or concerning the election of sixteen peers of Scotland, to sit and vote in the House of Peers in the Parliament of Great Britain, directed and appointed to be observed and done by the articles of Union, and the said recited act of Parliament in Scotland, intituled, Act settling the manner of electing the sixteen peers and forty-five members to represent Scotland in the Parliament of Great Britain, which act, by an act of Parliament in England in the fifth year of her Majesty's reign, intituled, An act for an Union of the two kingdoms of England and Scotland, was declared to be as valid as if the same had been part of and engrossed in the articles of Union, thereby ratified and approved, shall be observed and performed, except only wherein this act has further declared and provided.

And be it further enacted by the authority aforesaid, That in case any of the sixteen peers so chosen shall die, or become otherwise legally disabled to sit in the House of Peers of the Parliament of Great Britain, that her Majesty, her heirs and successors shall forthwith, after such death or disability, issue a proclamation under the Great Seal of Great Britain, for electing another peer of Scotland to sit in the House of Peers of the Parliament of Great Britain, in the room of such peer deceased, or otherwise legally disabled; which proclamation shall be published at such time and places as is herein enacted, touching proclamations issued upon summoning a Parliament of Great Britain; and the peers of Scotland being qualified as is hereby directed, shall proceed to elect a peer of Scotland to sit in the House of Peers of the Parliament of Great Britain, in the room of such peer

deceased, or otherwise legally disabled, in such manner and under such restrictions and regulations as are by this act directed to be observed, upon the electing sixteen peers of Scotland to sit in the House of Peers of the Parliament of Great Britain.

And be it further enacted by the authority aforesaid, That for the more effectual trial of any peer of Great Britain that hath committed, or shall commit any high treason, petit treason, misprision of treason, murder, or other felonies in Scotland, commission or commissions may issue under the Great Seal of Great Britain, to be directed to such person and persons as shall be therein named, constituting them, and such a number of them as shall be therein mentioned, justices of the Queen, her heirs and successors, to inquire, by the oaths of good and lawful men of such county and counties of Scotland as shall be named therein, of all treasons, misprisions of treason, murders, and other felonies committed in such county by a peer or peers of Great Britain; which inquisition shall be taken and made in the same manner as indictments found and taken before justices of oyer and terminer of any county of England, and shall be of the same effect, and proceeded upon in the same method as any inquisition found before justices of oyer and terminer in England, whereby any peer is indicted for any such offence; and such justices shall issue mandates or precepts to the sheriffs of the respective counties of Scotland, to return to them, at such day and place as they shall appoint, such and so many good and lawful men of the same county, as may be sufficient to inquire of the offences aforesaid, and twelve or more of them so returned being sworn shall be sufficient to make such inquiry, and find any indictment; and if the sheriff of such county shall not summon a sufficient number of men to make such inquisition, the justices that do proceed upon such commission may impose a fine upon such sheriff, which shall be levied by process out of the Exchequer; and if any of the

persons summoned by the sheriff to inquire, as aforesaid, shall not appear, the justices may in like manner impose a fine upon such person so making default, to be levied in manner aforesaid.

And be it further enacted by the authority aforesaid, That every person who shall refuse to take the oath last hereinbefore recited, or being a quaker, shall refuse to declare the effect thereof upon his solemn affirmation, as directed by an act of Parliament made in the seventh year of the reign of his late Majesty King William, intituled, An act that the solemn affirmation and declaration of the people called Quakers shall be accepted instead of an oath in usual form, (which oath or declaration the sheriff, president of the meeting, or chief officer taking the poll, at any election of members to serve in the House of Commons for any place in Great Britain, or commissioners for choosing burgesses for any place in Scotland, at the request of any candidate or other person present at such election, are hereby empowered and required to administer,) shall not be capable of giving any vote for the election of any such member to serve in the House of Commons for any place in Great Britain, or commissioner to choose a burgess for any place in Scotland.

Provided always, and be it enacted by the authority aforesaid, That if any person being a quaker, shall refuse to take the said oath, being tendered to him in pursuance of an act made in this present session of Parliament, intituled, An act for the better security of her Majesty's person and Government, but shall, instead thereof, declare the effect of the said oath, upon his solemn affirmation, as directed by an act of Parliament made in the seventh year of the reign of his late Majesty King William the Third, intituled, An act that the solemn affirmation and declaration of the people called Quakers shall be accepted instead of an oath in usual form, which affirmation shall be administered to such Quaker instead of the said oath, such Quaker

shall not be liable to any of the penalties or forfeitures for refusing the said oath when tendered to him, contained or mentioned in the said act, intituled, *An act for the better security of her Majesty's person and government.*

This act is explained and amended, so far as relates to the trial of peers for offences committed in Scotland, by the act 6. of Geo. IV. *cap.* 66.

The act 12. of Q. Anne, *cap.* 14, was passed, "for making perpetual the 7. of William III. entitled, "An act to prevent false and double returns of members to serve in Parliament."

The acts 2. of Geo. II. *cap.* 24, "for the more effectual preventing bribery and corruption in the election of members to serve in Parliament," (amended by 9. of Geo. II. *cap.* 38,) and 7. of Geo. II. *cap.* 16, "for the better regulating the election of members to serve in the House of Commons for that part of Great Britain called Scotland, and for incapacitating the Judges of the Court of Session, Court of Justiciary, and Barons of the Court of Exchequer in Scotland, to be elected, or to sit and vote as members of the House of Commons," being both altered by 16. of Geo. II. *cap.* 11, noticed below, it is unnecessary to quote their provisions.

The act 8. of Geo. II. *cap.* 30, "for regulating the quartering of soldiers during the time of the election of members to serve in Parliament," declares,

That when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or of any member or members to serve in Parliament, shall be appointed to be made, the secretary at war for the time being,

or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders in writing for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place, where such election shall be appointed to be made, out of every such city, borough, town, or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, and not to make any nearer approach to such city, borough, town, or place, as aforesaid, until one day at the least after the poll to be taken at such election shall be ended, and the poll books closed.

And be it further enacted by the authority aforesaid, That in case the secretary at war for the time being, or such person who shall officiate in the place of the secretary at war, shall neglect or omit to issue or send forth such orders, as aforesaid, according to the true intent and meaning of this act, and shall be thereof lawfully convicted upon any indictment to be preferred at the next assizes, or sessions of oyer and terminer, to be held for the county where such offence shall be committed, or on an information to be exhibited in the Court of King's Bench within six months after such offence committed, such secretary at war, or person who shall officiate in the place of the secretary at war, shall for such offence be discharged from their said respective offices, and shall from thenceforth be utterly disabled, and made incapable to hold any office or employment, civil or military, in his Majesty's service.

Provided nevertheless, That nothing in this act contained shall extend, or be construed to extend, to the city and liberty of Westminster, or the borough of Southwark, for and in respect of the Guards of his Majesty, his heirs or succes-

sors, nor to any city, borough, town, or place, where his Majesty, his heirs or successors, or any of his royal family shall happen to be or reside at the time of any such election, as aforesaid, for or in respect of such number of troops or soldiers only as shall be attendant as guards to his Majesty, his heirs or successors, or to such other person of the royal family, as is aforesaid; nor to any castle, fort, or fortified place, where any garrison is usually kept, for or in respect of such number of troops or soldiers only whereof such garrison is composed.

Provided likewise, That nothing in this act contained shall extend, or be construed to extend, to any officer or soldier who shall have a right to vote at any such election as aforesaid, but that every such officer and soldier may freely, and without interruption, attend and give his vote at such election, any thing herein-before contained to the contrary thereof notwithstanding.

Provided always, That the secretary at war, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall not be liable to any forfeiture or incapacity for not sending such order, as aforesaid, upon any election to be made of a member to serve in Parliament, on a vacancy of any seat there, unless notice of the making out any new writ for such election shall be given to him by the clerk of the crown in Chancery, or other officer making out any new writ for such election, which notice he is hereby directed and required to give, with all convenient speed, after making out the said writ.

The act 9. of Geo. II. *cap.* 38, “ to explain and
“ amend so much of an act made in the second year of
“ his present Majesty’s reign, intituled, An act for the
“ more effectual preventing bribery and corruption in
“ the election of members to serve in Parliament, as
“ relates to the commencing and carrying on of prose-

“cutions grounded upon the said act,” provides, that all prosecutions for the penalties denounced against bribery at elections must be brought within two years.

The act 16. of Geo. II. *cap.* 11, “to explain and amend the laws touching the election of members to serve for the Commons in Parliament, for that part of Great Britain called Scotland, and to restrain the partiality, and regulate the conduct of returning officers at such elections,” declares,

That so much of an act of Parliament made in the twelfth year of the reign of her late Majesty Queen Anne, intituled, “An act for the better regulating the elections of members to serve in Parliament for that part of Great Britain called Scotland,” as enacts, that no person or persons, who have not been enrolled, and voted at former elections, shall, upon any pretence whatsoever, be enrolled, or admitted to vote at any election, except he or they first produce a sufficient right or title to qualify him or them to vote at that election, to the satisfaction of the freeholders formerly enrolled, or the majority of them present, and ordains the returning officers to make their returns of the persons elected, by the majority of the freeholders enrolled, and those admitted by them, reserving always the liberty of objecting against the persons admitted to, or excluded from, the roll as formerly, shall be, and is hereby repealed.

II. And whereas the rolls of electors of commissioners to serve in Parliament for the several shires and stewartries within that part of Great Britain called Scotland, have not, in every one of the said shires and stewartries, been made up every year, at the Michaelmas head courts, pursuant to the directions of an act of Parliament made in that part of Great Britain called Scotland, in the year 1681, intituled, “An act concerning the election of commissioners for

“shires;” for remedy thereof, and the more effectually to carry the good intentions of the said act into execution, be it enacted and declared, by the authority aforesaid, that such persons as stand upon the roll last made up by the freeholders, whether at the Michaelmas meeting, or at the last election of a member to serve in Parliament, shall be the original constituent members at their next Michaelmas meeting, or meeting for election to revise the said roll.

III. Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful for any freeholder standing upon the roll, to object to the title of any person who stands at present upon the roll last made up, and for that purpose to apply at any time before the first day of December, which shall be in the year of our Lord 1743, by summary complaint to the Court of Session, who shall grant a warrant for summoning such persons, upon thirty days’ notice, to answer, and shall proceed in a summary way, to hear and determine upon such complaint; and, if no such complaint shall be exhibited within the time aforesaid, then and in that case no freeholder, who at present stands upon the rolls last made up in the said counties and stewartries respectively, shall be struck off or left out of the roll, except upon sufficient objections arising from the alteration of that right or title in respect of which he was enrolled, sustained by the other freeholders standing upon the said roll.

IV. And be it enacted by the authority aforesaid, That if at any Michaelmas meeting, or meeting for election, any person claiming to be enrolled shall, by judgment of the freeholders, be refused to be admitted, or if any person who stood upon the roll shall, by like judgment, be struck off or left out of the roll, it shall and may be lawful for him or them who is so refused to be admitted, or whose name is so struck off, or left out of the roll, to apply (so as such application be made within four calendar months after their being so refused, struck off, or left out) by summary com-

plaint to the Court of Session, who shall grant a warrant for summoning the person or persons upon whose objection or objections he was refused to be admitted, or was struck off, or left out as aforesaid, upon thirty days' notice, to answer, and shall proceed to hear and determine, in a summary way, on such complaint; and if any person shall be enrolled whose title shall be thought liable to objection, it shall and may be lawful for any freeholder standing upon the said roll, (whether such freeholder was present at the meeting or not), who apprehends that such person had not a right to be enrolled, to apply in like manner by complaint to the Court of Session, so as such application be made within four calendar months after such enrolment; and the said court, after service of such complaint, on thirty days' notice, upon the person said to be wrongfully admitted to the roll, shall, in manner aforesaid, hear and determine; and if no such complaint shall be exhibited within the time aforesaid, the freeholder enrolled shall stand and continue upon the roll until an alteration of his circumstances be allowed by the freeholders at a subsequent Michaelmas meeting, or meeting for election, as a sufficient cause for striking or leaving him out of the roll.

V. And be it enacted by the authority aforesaid, That if, in any of the aforesaid cases, the judgment of the Court of Session shall alter or reverse the determination of the meeting of the freeholders, by directing that any person shall be added to or expunged from the roll of election, the sheriff or steward's clerk shall, upon presenting to him the extract of such judgment, forthwith make the alteration thereby directed in the books that are kept by him; and in case of his refusal or delay, he shall forfeit the sum of one hundred pounds sterling to the person in whose favour the judgment of the Court of Session is given, to be recovered by him or his executors in the manner herein after directed.

VI. And be it further enacted by the authority aforesaid, That if the judgment of the freeholders, refusing to admit, or striking off any person from the said roll, shall be affirmed by the Court of Session, the person so complaining shall forfeit to the objector the sum of thirty pounds sterling, with full costs of suit.

VII. And be it enacted by the authority aforesaid, That, to prevent all surprise at the Michaelmas meetings, every freeholder who intends to claim to be enrolled at any subsequent Michaelmas meeting of the freeholders, shall, for the space of two calendar months at least before the said Michaelmas meeting, leave with the sheriff or steward's clerk a copy of his claim, setting forth the names of his lands, and his titles thereto, and dates thereof, with the old extent or valuation, upon which he desires to be enrolled; and in case of his neglect to leave his claim as aforesaid, he shall not be enrolled at such Michaelmas meeting; and in like manner, whoever intends to object to any freeholder who stands upon the roll, on account of the alteration of his circumstances, shall, at least two calendar months before the Michaelmas meeting, leave his objections in writing with the sheriff or steward's clerk, as aforesaid, who is hereby required, upon receipt of the aforesaid claim or objections, to indorse on the back thereof the day he received the same, and also to give a copy of the aforesaid claim or objections to any person who shall demand the same, upon paying the legal fee of an ordinary extract of the same length.

VIII. And whereas great difficulties have occurred in making up the rolls of electors of commissioners for shires, by persons claiming to be enrolled, in respect of the old extent of their lands, where the old extent does not appear from proper evidence, and votes have been unduly multiplied, by splitting and dividing the old extent of lands, since the sixteenth day of September one thousand six hundred and eighty-one;

for remedy thereof, be it enacted and declared, by the authority aforesaid, That no person is, or shall be, entitled to vote for a commissioner to serve in Parliament for any shire or stewartry in that part of Great Britain called Scotland, or to be enrolled in the roll of electors, in respect of the old extent of his lands, holden of the King or Prince, unless such old extent is proved by a retour of the lands, of a date prior to the sixteenth day of September one thousand six hundred and eighty-one; and that no division of the old extent, made since the aforesaid sixteenth day of September one thousand six hundred and eighty-one, or to be made in time coming, by retour, or any other way, is or shall be sustained as sufficient evidence of the old extent.

IX. Provided always, That lands holden of the King or Prince liable in public burdens for four hundred pounds Scots of valued rent, shall in all cases be a sufficient qualification, whatever be the old extent of the said lands, any law or practice to the contrary notwithstanding.

X. And be it further enacted, by the authority aforesaid, That no purchaser or singular successor shall be enrolled till he be publicly infest, and his sasine registered, or charter of confirmation be expedite, where confirmation is necessary, one year before the enrolment; and that no heir-apparent shall be enrolled, until his predecessor's titles are produced, and allowed by the freeholders as a sufficient qualification for his voting for a member of Parliament; and that any person may be enrolled, though absent at the time of such enrolment, provided the titles and vouchers of his qualification are produced, and laid before the freeholders: and, if any person shall be chosen a member to serve in Parliament for any shire or stewartry within that part of Great Britain called Scotland, who shall not be present at the meeting of election, be it enacted by the authority aforesaid, That the member to serve in Parliament so elected, before he takes his seat in Parliament, shall take the oath ap-

pointed to be taken by every freeholder who shall claim to vote at any election of a member to serve in Parliament, by the act of the seventh year of his present Majesty, intituled, "An act for the better regulating the election of members to serve in the House of Commons, for that part of Great Britain called Scotland; and for incapacitating the judges of the Court of Session, Court of Justiciary, and Barons of the Court of Exchequer in Scotland, to be elected, or to sit or vote as members of the House of Commons," before the Lord Steward of his Majesty's household, or any person or persons authorised by him for that effect, which he or they are hereby empowered and required to administer; and if a member to serve in Parliament, so elected, shall neglect or refuse to take the aforesaid oath, such election shall be void.

XI. And be it further enacted, by the authority aforesaid, that, at the annual meetings of the freeholders at Michaelmas, the original constituent members shall be such persons only as shall stand upon the roll that shall have been made up, whether at a Michaelmas meeting, or at a meeting for an election of a member to serve in Parliament, and that a copy signed and extracted of the roll, made up by the freeholders at their Michaelmas meetings, or meetings for elections, together with the minutes of their proceedings, at their said meetings, shall, by the respective clerks of such meetings, be forthwith delivered to the sheriff or steward's clerk *gratis*, and shall be inserted in books, to be kept by the said sheriff or steward's clerk for that purpose, who shall forthwith deliver copies of the same, extracted and signed, to any freeholder who shall desire the same, paying the legal fee for any ordinary extract of the same length, and shall, at every subsequent meeting at Michaelmas, or meeting for any election, produce the said books for the use of the freeholders; and in case such sheriff or steward's clerk shall neglect or refuse to enter the aforesaid rolls of election, or mi-

minutes of proceedings, into books so to be kept for that purpose, as aforesaid, or shall neglect or refuse to give copies thereof, extracted and signed, or shall omit to produce, the books at any subsequent meeting, as aforesaid, he shall for every such offence forfeit the sum of one hundred pounds sterling, to be recovered by any freeholder, within such shire or stewartry, who shall sue for the same, in such manner as is hereafter directed; and if the aforesaid principal books, containing the rolls and minutes as aforesaid, shall not be produced at the Michaelmas meetings, or meetings for election, a copy of the said roll and minutes, extracted and signed by the sheriff or steward's clerk, shall be sufficient; and if the sheriff or steward's clerk shall give out false copies of the said roll or minutes, extracted and signed by him, he shall for every such offence forfeit the sum of one hundred pounds sterling to the person to whom the false copy is given, to be recovered by him or his executors in the manner herein after directed, and shall be for ever after incapable of holding or enjoying his said office.

XII. And be it further enacted, by the authority aforesaid, that, at every election of a commissioner to serve in Parliament for any shire or stewartry within that part of Great Britain called Scotland, the roll of electors which shall be last made up by the freeholders, whether at the Michaelmas meeting, or at the last election of a member to serve in Parliament, shall be the roll to be called over by the commissioner last elected, or, in his absence, by the sheriff or steward's clerk, in order to the election of preses and clerk, as also by the preses, after he is chosen, for the choice of the member to serve in Parliament, and for the determination of all the questions that shall arise in the adjusting the roll, and in the course of the election, excepting so far as the said roll shall, after the meeting is duly constituted by the choice of preses and clerk, be altered by judgment of the majority of the freeholders standing on that roll, by leaving out those

whose circumstances are altered, and by adding others who produce proper titles.

XIII. And be it further enacted by the authority aforesaid, That at every meeting for an election of a commissioner to serve in Parliament, if the commissioner last elected, or, in his absence, the sheriff or stewart clerk, shall, in the choice of preses or clerk, receive the vote of any person that does not stand upon the said roll, he shall, for every such offence, forfeit the sum of three hundred pounds sterling to every candidate for the office of preses or clerk respectively, for whom such person shall not have given his vote, to be recovered by him or them, his or their executors respectively, in manner herein after directed ; or, if the commissioner last elected, or, in his absence, the sheriff or stewart's clerk, shall, in the choice of preses or clerk, not call for, or shall refuse the vote of, any person whose name is upon the said roll, he shall, for every such offence, forfeit the like sum of three hundred pounds sterling to the person whose name shall not be called for, or whose vote shall be refused, to be recovered by him, or his executors, in the manner herein after directed ; and if the preses, after he is chosen, shall, in the election of the member to serve in Parliament, receive the vote of any person who does not stand upon the roll duly made up by the said meeting, he shall, for every such offence, forfeit the sum of two hundred pounds sterling to every candidate for whom such person shall not have given his vote, to be recovered by him, or his executors in the manner herein after directed ; or, if the preses, after he is chosen, shall, in the election of the member to serve in Parliament, not call for, or shall refuse the vote of, any person whose name is upon the said roll so made up as aforesaid, he shall, for every such offence, forfeit the like sum of two hundred pounds sterling to the person whose name shall not be called for, or whose vote shall be refused, to be recovered by him or his executors in the manner herein after directed : And it is hereby

declared, that, in case of equality of votes in the choice of preses or clerk, the commissioner last elected, and, in his absence, any freeholder present who last represented the shire or stewartry in any former Parliament; and, if no such person is present, the freeholder present who presided last at any meeting for any election, and, in his absence, the freeholder who has presided at any Michaelmas meeting; and if none of the said persons shall be present, the freeholder present who stands first on the roll, shall, besides their own votes as freeholders, have the casting and determining vote, and that the preses chosen shall, after his election, in the choice of the commissioner to serve in Parliament, and all other questions where the votes are equal, in like manner, besides his own vote as a freeholder, have the casting and determining vote.

XIV. And be it further enacted by the authority aforesaid, That the persons chosen to be preses and clerk by the majority of the freeholders present, standing on the said roll, shall be preses and clerk of the meeting for such election; and it shall not be lawful for any number of freeholders to separate from the majority of the persons present who stand upon the said roll, and set up any person as preses or clerk other than those who shall be chosen by the majority of the freeholders present standing on the said roll, and that it shall not be lawful for any person to act as preses or clerk at any such election, unless they are chosen by the majority of persons standing on the said roll; and every freeholder who shall so separate from the majority of the freeholders on the roll, and set up any person as preses or clerk, other than those who shall be chosen by the majority as aforesaid, he shall, for every such offence, forfeit the sum of fifty pounds sterling, to the candidate who shall be chosen by the majority of the freeholders from whom such separation was made; to be recovered by him or his executors in the manner herein after directed: And if any person presume to act as preses or clerk who is not chosen by the majority of the freeholders

present standing on the said roll, he shall, for every such offence, forfeit the sum of two hundred pounds sterling to the candidate who shall be chosen by the majority of the freeholders, as aforesaid, to be recovered by him or his executors as herein-after directed.

XV. And be it further enacted, by the authority aforesaid, That the commissioner last elected, or, in his absence, the sheriff or steward's clerk, shall sign the minutes of the election of preses and clerk, and deliver the same to the clerk chosen by the majority of the freeholders, as aforesaid; and if the commissioner last elected, or, in his absence, the sheriff or steward's clerk, shall neglect or refuse to sign the aforesaid minutes of election of preses and clerk, and deliver the same to the clerk chosen as aforesaid, or shall sign false minutes thereof, he shall, for every such offence, forfeit the sum of one hundred pounds sterling to the person elected preses, as aforesaid, to be recovered by him or his executors, in the manner hereafter directed.

XVI. And be it further enacted, by the authority aforesaid, That the clerk chosen by the majority of the freeholders on the aforesaid roll, shall return to the sheriff or steward such person as shall be elected by the majority of the freeholders on the roll made up at the meeting for election, in the manner aforesaid; and if the clerk chosen as aforesaid shall refuse or neglect to return the person elected by the majority of the freeholders on the roll made up at the meeting for election, or shall return any person other than him who shall be elected by the majority of the freeholders, as aforesaid, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present Majesty, forfeit the sum of five hundred pounds sterling to the candidate chosen by the majority of the freeholders on the aforesaid roll, to be recovered by him, or his executors, in the manner herein-after directed.

XVII. And be it further enacted, by the authority aforesaid, That every sheriff or stewart of any shire or stewartry, within that part of Great Britain called Scotland, upon producing to him a copy of the aforesaid roll last made up by the freeholders at the last Michaelmas meeting, or at the last election of a member to serve in Parliament, extracted and signed by the sheriff or stewart's clerk, and upon producing and shewing to him the original minutes of the election of preses and clerk, signed by the commissioner last elected, or, in his absence, by the sheriff or stewart's clerk, shall annex to the writ the return made by the clerk chosen by the majority of the freeholders on the aforesaid roll; and if any such sheriff or stewart shall neglect or refuse to annex to the writ such return, or if he shall annex to the writ the return made by any other person pretending to be clerk to the election, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present Majesty, forfeit the sum of five hundred pounds sterling to the person returned by the clerk, and chosen by the majority of the freeholders on the aforesaid roll, to be recovered by him, or his executors, in the manner hereafter directed.

XVIII. And be it further enacted, by the authority aforesaid, That every sheriff or stewart of any shire or stewartry, within that part of Great Britain called Scotland, shall hold the Michaelmas head court, in all time to come, on the day on which it shall appear to him to have been most usually held in times past; and, to prevent all uncertainty in time coming, every sheriff or stewart shall, at least fourteen days before Michaelmas next, appoint a precise day for holding his Michaelmas head court, in the year 1748, and shall cause intimate the day of holding his court at all the parish churches within his said shire or stewartry, upon a Sunday, at least eight days preceding the next Michaelmas head court: And it is hereby declared, That the day so to be appointed by the

said sheriff or steward before Michaelmas next shall be the anniversary for holding the Michaelmas head court of the said shire or stewartry in all time coming.

XIX. And whereas, by the constitution of the shire of Sutherland, and by constant usage, the small barons of the said shire have been represented in Parliament, not only by the immediate vassals of the king and prince, but also by those who held their lands of the Earls of Sutherland, or of other subject superiors, and such vassals holding their lands of subject superiors, have been in use to vote at the election of the commissioners for the said shire of Sutherland, as well as the vassals of the king and prince, and that without any restriction as to the quota of the old extent, or of the valued rent of the lands, in respect whereof a right to vote at such elections, or to be elected commissioner for the said shire was claimed, and thereby votes have been unduly multiplied, and several persons have claimed a vote in respect of the superiority and property of the same lands, whereby great confusions are likely to ensue in future elections; for remedy thereof, be it further enacted, by the authority aforesaid, That from and after the first day of September, which shall be in the year of our Lord 1745, no person shall be capable to be elected commissioner for the said shire, or shall have right to vote at such election, unless he be infest, and in possession of lands liable to his Majesty's supplies, and other public burthens, at the rate of two hundred pounds Scots valued rent.

XX. And be it further enacted, by the authority aforesaid, That one person, and no more, shall be entitled to vote at such elections, or to be elected, in respect of the same lands; and that where lands are now holden by any baron, or other freeholder, immediately of the king or prince, such baron or freeholder shall be capable to be elected, and shall be entitled to vote for those lands; and no vassal or sub-vassal of the said baron or freeholder shall have right to vote, or to be

elected, in respect thereof; and that where lands are now holden, or shall at any time hereafter be holden, of the king or prince, by a peer, or other person, or body politic or corporate, who by law are disabled to be a member of the House of Commons, or to vote in such elections; in such case, the proprietor and owner of such lands, and not any of his superiors, shall be entitled to vote, or to be elected, in respect of the same lands; and that no alienation of the superiority to be made by such peer, or other person, or body politic, incapable to elect, or to be elected, shall deprive the proprietor and owner of the lands of his right to vote in the elections for the said shire, or his capacity to be elected; nor entitle the purchaser of the said superiority to vote or to be elected; and that the property of lands of the valuation afore-said, holden, in part, immediately of the king or prince, and in part of a peer, or other person, or body politic, incapable to elect, or to be elected, shall be a sufficient qualification to the proprietor and owner of such lands, and shall entitle such proprietor to vote, and to be elected for the said shire, any law or usage to the contrary notwithstanding.

XXI. And be it enacted, by the authority foresaid, That the freeholders and proprietors, having right to elect, or to be elected, a commissioner for the shire of Sutherland, shall meet at the head borough of the said shire, at the Michaelmas head court, which shall be in the year of our Lord 1745, and shall make up a roll of the electors having right to vote in the choice of a commissioner, in the terms of this present act, and of the other acts of Parliament made touching the election of commissioners for the shires in Scotland; and which roll, so made up, shall be revised yearly at the Michaelmas meetings, and at after elections, according to the rules prescribed in this act, and in other acts made for regulating the elections of commissioners for shires in that part of Great Britain called Scotland: And it is hereby declared, That the said acts of Parliament do extend to the shire of

Sutherland, as well as to the other shires in Scotland, except in so far as it is otherwise provided by this present act.

XXII. And whereas at the election of members to serve in Parliament for the districts of boroughs in that part of Great Britain called Scotland, it often happens that more persons than one claim to be admitted to vote as commissioners for the same borough, which furnishes pretences to the clerks of the presiding boroughs for partially making false and undue returns ; for remedy thereof, be it enacted by the authority aforesaid, That, at the annual election of magistrates and counsellors, and in all the proceedings previous to the election of the magistrates and counsellors for the succeeding year, it shall not be lawful for the minority of any meeting for election, either of magistrates or counsellors, or deacons, or other persons, who, by the constitution of the respective boroughs, may have votes in the election of magistrates or counsellors, to separate from the majority of those having right to act by the constitution of the borough at such meetings, upon any pretext whatsoever ; nor to make any separate election of magistrates, counsellors, or electors ; but the minority shall, in all cases, submit to the election made by the majority in all parts of election ; and if any person elected by the minority of any such meeting shall presume to vote in the election of magistrates or counsellors, or in electing the magistrates or counsellors, or in any other step of the election, he shall forfeit the sum of one hundred pounds sterling, to any one of the majority of such meeting, to be recovered by him in the manner hereafter directed.

XXIII. And be it further enacted, by the authority foresaid, That no person elected to be a magistrate or counsellor by a minority of those having right to vote in elections of the magistrates and counsellors, shall, upon any pretext whatsoever, presume to act as magistrate or counsellor ; and if any person shall, notwithstanding, presume to act as magistrate or counsellor, he shall, for every such offence, for-

feit the sum of one hundred pounds sterling to the magistrates or counsellors elected by the majority, or to any of them who shall sue for the same, to be recovered by him or them in the manner herein after directed.

XXIV. Provided always, and it is hereby declared and enacted, That it shall and may be lawful to and for any constituent member, at any meeting for election of magistrates or counsellors, or of any meeting previous to that for the election of magistrates and counsellors, respectively, who shall apprehend any wrong to have been done by the majority of such meeting, to apply to the said Court of Session, by a summary complaint, for rectifying such abuse, or for making void the whole election made by the said majority, or for declaring and ascertaining the election made by the minority, so as such complaint be presented to the said Court of Session within two calendar months after the annual election of the magistrates and counsellors; and the said court shall thereupon grant a warrant for summoning the magistrates and counsellors elected by the majority, upon thirty days' notice, and shall hear and determine the said complaint summarily, without abiding the course of any roll, and shall allow the party who shall prevail their full costs of suit.

XXV. And whereas the magistrates and counsellors of the royal boroughs in that part of Great Britain called Scotland, by virtue of several laws now in force, are bound to take and subscribe the oath of allegiance, subscribe the assurance, and to take and sign the oath of abjuration, for and on account of their election into their respective offices, and that in his Majesty's Courts of Session, Justiciary, or Exchequer, at Edinburgh, or at the quarter sessions of the respective shires and stewartries within which the royal boroughs are situate, which has been found by experience to be attended with great trouble and expense to the said magistrates and counsellors; for remedy thereof, be it enacted, by

the authority aforesaid, That it shall and may be lawful to the said magistrates and counsellors to take and subscribe the oath of allegiance, subscribe the assurance, and take and sign the oath of abjuration, before the council of their respective boroughs ; and which oaths the chief magistrate, or any other magistrate of the said boroughs, respectively, is hereby empowered and required to administer ; and the oaths so taken shall be equal in all respects as if they had been taken in the courts, and before the judges directed by the several acts of parliament above referred to.

XXVI. And be it enacted, by the authority foresaid, That at every election of commissioners for choosing burgesses for any district of boroughs in that part of Great Britain called Scotland, the common clerk of each borough within the said district shall make out a commission to the person chosen commissioner by the major part of the magistrates and town-council assembled for that purpose, which magistrates and town-council shall take the oath of allegiance, and sign the same with the assurance, and shall take all the other oaths appointed to be taken at such election, by this or any former act, if required ; and the said clerk shall affix the common seal of the borough thereto, and sign such commission, and shall not, on any pretence whatsoever, make out a commission for any person as commissioner, other than him who is chosen by the majority as aforesaid ; and if any common clerk of any borough shall neglect or refuse duly to make out and sign a commission to the commissioner elected by the majority as aforesaid, and affix the seal of the borough thereto, or if he shall make out and sign a commission to any other person who is not chosen by the majority, or affix the common seal of the borough thereto, he shall for every such offence forfeit the sum of five hundred pounds sterling, to the person elected commissioner for the said borough as aforesaid, to be recovered by him or his executors, in

the manner herein after directed, and shall also suffer imprisonment for the space of six calendar months, and be for ever after disabled to hold or enjoy the said office of common clerk of the said borough, as effectually as if he was naturally dead.

XXVII. And be it further enacted, by the authority aforesaid, That if any other person, who is not the common clerk of the borough, shall take upon himself to act as such in any election of a commissioner for choosing a burgess for any district of boroughs in that part of Great Britain called Scotland, and shall make out a commission for any other person as commissioner, other than the person who was chosen by the majority as aforesaid, and shall sign or affix the common seal of the borough thereto, he shall, for every such offence, forfeit the sum of five hundred pounds sterling to the person elected commissioner for the said borough as aforesaid; to be recovered by him or his executors in the manner herein after directed.

XXVIII. And whereas, by an act passed in that part of Great Britain called Scotland the 5th day of February in the year one thousand seven hundred and seven, intituled, "Act settling the manner of electing the sixteen peers, and forty-five commoners, to represent Scotland in the Parliament of Great Britain," it is, amongst other things, enacted, That where the votes of the commissioners for the said boroughs, met to choose representatives from their several districts to the Parliament of Great Britain, shall be equal; in that case, the president of the meeting shall have a casting or decisive vote, and that by and attour his vote as a commissioner from the borough from which he is sent; but no provision is made, in case of the absence of the commissioner from the presiding borough, or of his refusing to vote at such election: for remedy thereof, be it enacted, by the authority aforesaid, That if the commissioner from the presiding borough shall be absent from the meeting of commis-

sioners for choosing burgesses to serve in Parliament, or shall refuse to vote at such election, the commissioner from the borough which was the presiding borough at the last election; and if he also be absent, or shall refuse to vote as aforesaid, the commissioner from the borough which was the presiding borough at the election immediately preceding the last; and in case he shall be likewise absent, or shall refuse to vote as aforesaid, the commissioner from the borough which was the last presiding borough but two, shall have, in the aforesaid respective cases, besides his own vote, the casting or decisive vote.

XXIX. And be it further declared, by the authority aforesaid, That it is no objection to any commissioner for choosing a burgess, that he is not a residenter within the borough bearing all portable charges with his neighbours, or that he is no trafficking merchant therein, or that he is not in possession of any burgage lands or houses holding of the said borough, and that such qualifications need not be engrossed in his commission; any law, custom, or usage to the contrary notwithstanding.

XXX. And be it further enacted, by the authority aforesaid, That at all meetings of commissioners for choosing burgesses to serve in Parliament, the common clerk of the presiding borough shall allow the votes of such persons only who produce commissions authenticated by the subscription of the common clerk, and the common seal of the respective boroughs within the district, and shall return to the sheriff or steward the person elected by the major part of the commissioners assembled, whose commissions are authenticated as aforesaid; and if he neglect or refuse to return such persons so elected to the sheriff or steward, or, if he shall return to the sheriff or steward any person other than him who is so elected, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present Ma-

jesty, forfeit the sum of five hundred pounds sterling, to the candidate elected by the majority of the commissioners assembled, whose commissions are authenticated as aforesaid; to be recovered by him or his executors in the manner herein after directed; and he shall also suffer imprisonment for the space of six calendar months, and be for ever after disabled to hold or enjoy his said office of common clerk of the said presiding borough, as if he was naturally dead.

XXXI. And be it enacted, by the authority aforesaid, That every sheriff or steward, in that part of Great Britain called Scotland, shall annex to the writ the return made by the aforesaid clerk of the presiding borough; and if any such sheriff or steward neglect or refuse to annex to the writ such return, or if he shall annex to the writ any return made by any other person, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present Majesty, forfeit the sum of five hundred pounds sterling to the candidate returned by the aforesaid clerk of the presiding borough, to be recovered by him or his executors in the manner herein after directed.

XXXII. Provided always, That if any person to whom no commission is made out as aforesaid, shall insist that he was duly elected the commissioner from any royal borough, the person so claiming shall be admitted to the meeting of the commissioners for choosing burgesses to serve in Parliament, and may at the said meeting make offer of taking all the oaths required by law, and declare for whom he would have voted had he been duly commissioned; which oaths the clerk of the presiding borough is hereby required and empowered to administer; and the said clerk shall also set down in the minutes of proceedings, the declaration of such person as to the candidate for whom he would have voted, had he been duly commissioned; but the said clerk shall, upon no pre-

tence whatsoever, receive or consider such person as a legal voter, or such declaration as a legal vote at such election.

XXXIII. And whereas doubts have arisen, whether the act of Parliament, made in the second year of the reign of his present Majesty, intituled, "An act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament," extends to the electors of commissioners for choosing burgesses; be it hereby enacted, by the authority aforesaid, That the electors of commissioners for any royal burgh, within that part of Great Britain called Scotland, for choosing burgesses to Parliament, are, within the true intent and meaning of the said act, to be considered as electors of the member to serve in Parliament, and shall be so deemed and adjudged to all intents and purposes whatsoever, and shall be liable to all the provisions, forfeitures, and incapacities to which persons voting, or claiming to vote for any member to serve in Parliament are made liable by the said act.

XXXIV. And be it further enacted, by the authority aforesaid, That at every election of commissioners for choosing burgesses for the several districts of boroughs in that part of Great Britain called Scotland, and at the election of a burgess to serve in Parliament for the city of Edinburgh, every magistrate, town-counsellor, or person having, or claiming to have a right to vote at such election, instead of the oath prescribed to be taken by the said act, before he is admitted to vote at the same election, shall take the following oath, in case the same shall be demanded by any one of the electors; and which oath any of the magistrates, or, in their absence, any of the town-council, are hereby empowered and required to administer:

"I A. B. do solemnly swear, that I have not, directly or indirectly, by way of loan or other device whatsoever, received any sum or sums of money, office, place, employment, gratuity or reward, or any bond, bill, or note, or

“ any promise of any sum or sums of money, office, place,
“ employment, or gratuity whatsoever, either by myself or
“ any other, to my use, benefit, or advantage, or to the use,
“ benefit, or advantage of the city or borough of which I am
“ magistrate, counsellor, or burgess, in order to give my vote
“ at this election. So help me God.”

XXXV. And be it further enacted by the authority aforesaid, That in all elections of commissioners for choosing burgesses, and before they proceed to election, the common clerk of each borough shall take and subscribe the oath following, which any of the magistrates, or in their absence, any two of the town-council are hereby empowered and required to administer :

“ I A. B. do solemnly swear, that I have not, directly or
“ indirectly, by way of loan, or other device whatsoever, received any sum or sums of money, office, place, employment, gratuity, or reward, or any bond, bill, or note, or
“ any promise of any sum or sums of money, office, place, employment, or gratuity whatsoever, either by myself or
“ any other, to my use, or benefit, or advantage, to make
“ out any commission for a commissioner for choosing a
“ burgess ; and that I will duly make out a commission to
“ the commissioner who shall be chosen by the majority of
“ the town-council assembled, and to no other person. So
“ help me God.”

And that at all meetings of the commissioners for choosing burgesses to serve in Parliament, and before they proceed to the election, the clerk of the presiding borough shall take and subscribe the following oath, which the commissioner for the presiding borough, or, in his absence, any other of the commissioners, is hereby required and empowered to administer :

“ I A. B. do solemnly swear, that I have not, directly or
“ indirectly, by way of loan, or other device whatsoever, received any sum or sums of money, office, place, employ-

“ment, gratuity, or reward, or any bond, bill, or note, or
“any promise of any sum or sums of money, office, place,
“employment, or gratuity whatsoever, either by myself, or
“any other to my use, or benefit, or advantage, to make
“any return at this election of a member to serve in Parlia-
“ment; and that I will return to the sheriff or steward the
“person elected by the major part of the commissioners as-
“sembled, whose commissions are authenticated by the sub-
“scription of the common clerk, and common seal of the re-
“spective boroughs of this district. So help me God.”

XXXVI. And be it further enacted, by the authority aforesaid, That if the clerk of the presiding borough shall neglect or refuse to take the oath aforesaid, such clerk so refusing or neglecting shall be incapable to act as clerk to the said meeting; and it shall be lawful to and for the said commissioners, and they are hereby empowered and required to choose another clerk to the meeting for the election, and who shall have all the powers and authorities in the said meeting, and in the returning the member chosen by them, that by law are competent to the clerk of the presiding borough.

XXXVII. And be it further enacted, by the authority aforesaid, That at all the elections of a member to serve in Parliament for any county or stewartry in that part of Great Britain called Scotland, the clerk chosen by the majority of such persons as stand upon the said roll last made up by the freeholders, whether at the Michaelmas court, or at the last election of a member to serve in Parliament, shall immediately after his election take and subscribe the following oath, which the preses of the meeting is hereby required and empowered to administer:

“I A. B. do solemnly swear, that I have not, directly or
“indirectly, by way of loan or other device whatsoever, re-
“ceived any sum or sums of money, office, place, or employ-
“ment, gratuity or reward, or any bond, bill or note, or any

“ promise of any sum or sums of money, office, place, employment, or gratuity whatsoever, by myself or any other
“ to my use, or benefit, or advantage, to make any return at
“ the present election of a member to serve in Parliament;
“ and that I will return to the sheriff or steward the person
“ elected by the majority of the freeholders upon the roll
“ made up at this election, and who shall be present and
“ vote at this meeting. So help me God.”

XXXVIII. And whereas, by the said act of Parliament, made in the second year of his present Majesty, it is enacted, that every sheriff, mayor, bailiff, head-borough, or other person being the returning officer of any member to serve in Parliament, shall, immediately after reading the writ or precept for the election of such members, take and subscribe the oath contained in the aforesaid act; be it enacted by the authority aforesaid, That so much of the said act as requires the said oath to be taken by any returning officer within that part of Great Britain called Scotland, shall be, and is hereby repealed.

XXXIX. And be it further enacted, by the authority aforesaid, That if any person shall presume wilfully and falsely to swear and subscribe any of the oaths required to be taken by this act, and shall thereof be lawfully convicted, he shall incur the pains and punishments of perjury, and be prosecuted for the same, according to the laws and forms in use in Scotland.

XL. And be it further enacted, by the authority aforesaid, That when any new Parliament shall at any time hereafter be summoned or called, the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, shall issue out the writs for election of members to serve in Parliament for that part of Great Britain called Scotland with as much expedition as the same may be done; and that, as well upon the calling or summoning any new Parliament, as also in case of any vacancy during this present, or any fu-

ture Parliament, the several writs shall be delivered to the sheriff or steward to whom the execution thereof does belong or appertain, and to no other person whatsoever ; and that every such sheriff or steward, upon the receipt of the writ, shall, upon the back thereof, indorse the day he received the same, and shall forthwith, upon the receipt of the writ, at least within the space of four days after the receipt thereof, make out a precept to each borough within his jurisdiction, to elect a commissioner for choosing a burgess to serve in Parliament, and shall cause the same to be delivered to the chief magistrate of such borough, resident in the borough for the time being ; and in case such sheriff or steward shall neglect to indorse on the back of the writ the day he received the same, or shall neglect to make out his precept, and to deliver the same to the chief magistrate within the time, and in the manner above directed, he shall, for every such offence, forfeit the sum of one hundred pounds sterling to any magistrate of the borough to which the precept is not timeously delivered, who shall sue for the same, to be recovered in manner herein after directed.

XLI. And be it further enacted, by the authority aforesaid, That such chief magistrate to whom the precept shall be delivered in manner above directed, upon the receipt thereof, shall, upon the back of the precept, indorse the day he received the same, and shall, within two days after his receipt of the precept, call and summon the council of the borough together, by giving notice personally, or leaving notice at the dwelling-place of every counsellor then resident in that borough ; which council shall then appoint a peremptory day for the election of a commissioner for choosing a burgess to serve in Parliament.

XLII. Provided always, That two free days shall intervene betwixt the meeting of the council which appoints the day of election of the said commissioner, and the day on which the election of the commissioner is to be made ; and

in case such chief magistrate shall neglect to indorse the day he received the precept on the back thereof, or to summon the council within the time, and in the manner above directed, he shall for every such offence forfeit the sum of one hundred pounds sterling to any magistrate or counsellor of the said borough who shall sue for the same, to be recovered in manner herein after directed.

XLIII. And be it farther enacted, by the authority aforesaid, That every penalty or forfeiture by this act imposed, in that part of Great Britain called Scotland, shall and may be sued for and recovered by way of summary complaint before the Court of Session, upon thirty days' notice to the person complained of, without abiding the course of any roll; which said complaint the Court of Session is hereby authorised and required to determine; as also to declare the disabilities and incapacities, and to direct the imprisonments, as herein provided.

XLIV. Provided always, and it is hereby declared and enacted, by the authority foresaid, That no person shall be made liable to any incapacity, disability, forfeiture, or penalty by this act imposed in that part of Great Britain called Scotland, unless prosecution be commenced within one year after such incapacity, disability, forfeiture, or penalty shall be incurred.

This act was amended by the statute, 14. of Geo. III. cap. 81, quoted in the title "*Burgh Royal*," Div. III. See statutes 10. of Geo. III. cap. 16, explained and amended by 11. of Geo. III. cap. 42, and made perpetual by 14. of Geo. III. cap. 14,—10. of Geo. III. cap. 41, explained by 15. of Geo. III. cap. 36.—and 24 of Geo. III. cap. 26, 2d session.

By the statute 25. of Geo. III. cap. 84, sect. 14. it is declared,

XIV. And be it further enacted, That if any sheriff or

returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in Parliament for any county, city, borough, or place within Great Britain, every such person may, in case it shall have been determined by a select committee, appointed in the manner herein before directed, that such person was entitled to have been returned, sue the sheriff, or other officer or officers, having so wilfully delayed, neglected, or refused duly to make such return, and every or any of them at his election, in any of his Majesty's courts of record at Westminster, or the Court of Session in Scotland ; and shall recover double the damages he shall sustain by reason thereof, together with full costs of suit.

XV. Provided always, and be it further enacted, That every indictment, information, or action, for any offence against this act, shall be found, filed, or commenced within one year after commission of the fact, on which such indictment, information, or action, shall be grounded, or within six months after the conclusion of any proceedings in the House of Commons relating to such election.

See statute 28. of Geo. III. *cap.* 52, " for the further regulation of the trials of controverted elections " or returns of members to serve in Parliament ;" explained by the acts 32. of Geo. III. *cap.* 1. and 34. of Geo. III. *cap.* 83.

By the statute 30. of Geo. III. *cap.* 17, sect. 4. it is declared, " that a complaint presented to the Lord Ordinary on the Bills in time of vacation within the said " four calendar months, shall be equivalent to, and " have the same effect, for all the purposes provided for " by the said act of the 16. of his late Majesty, as if " such complaint had been presented to the Court of " Session while sitting : Provided always, that printed

“copies of such complaint be lodged, in the usual
“form, on or before the third sederunt of the ensuing
“session.”

See statute 33. of Geo. III. *cap.* 64.

The statute 35. of Geo. III. *cap.* 65, “to prevent
“unnecessary delay in the execution of writs for the
“election of members to serve in Parliament for that
“part of Great Britain called Scotland,” declares,

That the sheriff or steward depute or substitute of any
county or stewartry in that part of Great Britain called
Scotland, shall, within six free days after receiving the writ
or writs for the election of members to serve in Parliament,
direct the notices required by law to be given as to the time
and place of election of a member for such county or stew-
artry; and that the day of election appointed by the sheriff
shall not be sooner than six free days, nor later than fifteen
days after the day of publication at the church-doors.

“I. And whereas doubts have been entertained by whom
“the writs for election of members to serve for the Com-
“mons in Parliament for that part of Great Britain called
“Scotland should be received and executed, when there
“happens to be a principal or high sheriff or steward ap-
“pointed by his Majesty in any county or stewartry, as well
“as a sheriff-depute or steward-depute, whose commission
“is also derived from the crown, and is *ad vitam aut culpam*,
“in respect that, by an act, passed in the twentieth year of
“his late Majesty, for taking away and abolishing the he-
“ritable jurisdictions, these offices, and the powers and au-
“thorities belonging to them, were essentially changed;”
for remedy thereof, and to remove such doubts, be it enact-
ed, That upon issuing of any writ or writs for the election of
a member or members to serve in Parliament for that part
of Great Britain called Scotland, the said writ or writs shall
be forthwith forwarded and delivered to the sheriff-depute,

or stewart-depute, or to the substitute of each, and the principal or high sheriff, or stewart, shall not officiate either in receiving or in executing the writ, the whole of this duty being entrusted to the sheriff-depute or stewart-depute, or in case of absence, to the substitute of each, and to no other person whatsoever.

III. And be it enacted, by the authority aforesaid, That if any sheriff or stewart depute or substitute will wilfully refuse, neglect, or delay to do or perform what is hereby required of him in any of the particulars aforesaid, he shall, for every offence, forfeit and pay the sum of five hundred pounds sterling, one half to the person who shall sue for the same, and the other half to his Majesty, to be sued for and recovered in the manner directed by an act of the sixteenth year of the reign of his late Majesty King George the Second, intituled, An act to explain and amend the laws touching the election of members to serve for the Commons in Parliament for that part of Great Britain called Scotland; and to restrain the partiality, and regulate the conduct of returning officers at such elections.

IV. And be it enacted, by the authority aforesaid, That if any principal or high sheriff or stewart, or any person other than the sheriff or stewart depute, or the substitute of each, shall presume in any respect to interfere or take upon himself the execution of writs of election of members to serve in Parliament for that part of Great Britain called Scotland, every such person so offending in any particular, shall, for every offence, forfeit and pay the sum of one thousand pounds sterling, one half to the person who shall sue for the same, and the other half to his Majesty, his heirs and successors, to be sued for and recovered in the manner directed by an act of the sixteenth year of the reign of his late Majesty King George the Second, intituled, An act to explain and amend the laws touching the election of members to serve for the Commons in Parliament, for that part of

Great Britain called Scotland, and to restrain the partiality and regulate the conduct of returning officers at such elections; and further, the person convicted on any suit shall thereby become disabled and incapable of ever bearing or executing any office or place of trust whatsoever under his Majesty, his heirs and successors.

V. Provided always, and be it further enacted by the authority aforesaid, That every action or suit for any offence against this act, shall be commenced within twelve months after commission of the fact on which the same is grounded, or within twelve months after the conclusion of any proceedings in the House of Commons relating to such election.

VI. "And whereas the several parish-churches in the "stewartry of Orkney and Zetland are situated upon islands, "detached and difficult of access;" be it therefore enacted, That the writ for the election of a member to serve in Parliament for the said stewartry shall be published at the town of Kirkwall, and the twelve parish-churches in the island of Pomona, or the main land of Orkney only.

See statute 42. of Geo. III. *cap.* 84, "for the further regulation of the trials of controverted elections "or returns of members to serve in Parliament, and "for expediting the proceedings relative thereto." This was a temporary statute; but it was revived and made perpetual by the act 47. of Geo. III. *cap.* 1.

The statute 49. of Geo. III. *cap.* 118, "for better "securing the independence and purity of Parliament, "by preventing the procuring or obtaining of seats in "Parliament by corrupt practices," declares,

That if any person or persons shall, from and after the passing of this act, either by himself, herself, or themselves, or by any other person or persons for or on his, her, or their behalf, give, or cause to be given, directly or indirectly, or

promise or agree to give any sum of money, gift, or reward, to any person or persons, upon any engagement, contract, or agreement, that such person or persons to whom, to whose use, or on whose behalf such gift or promise shall be made, shall, by himself, herself, or themselves, or by any other person or persons whatsoever at his, her, or their solicitation, request or command, procure or endeavour to procure the return of any person to serve in Parliament for any county, stewartry, city, town, borough, cinque port, or place, every person so having given, or promised to give, if not returned himself to Parliament, for such county, stewartry, city, town, borough, cinque port, or place, shall, for every such gift or promise, forfeit the sum of one thousand pounds, to be recovered in such manner as is herein after provided with respect to the sum of five hundred pounds; and every such person so returned, and so having given, or so having promised to give, or knowing of and consenting to such gifts or promises, upon any such engagement, contract, or agreement, shall be, and is hereby declared and enacted to be disabled and incapacitated to serve in that Parliament for such county, stewartry, city, town, borough, cinque port, or place, and that such person shall be deemed and taken, and is hereby declared and enacted to be deemed and taken to be no member of Parliament, and enacted to be, to all intents, constructions, and purposes, as if he had never been returned or elected a member in Parliament; and any person or persons who shall receive or accept of, by himself, herself, or themselves, or by any other person or persons in trust for or to the use or on the behalf of him, her, or them, any such sum of money, gift, or reward, or any such promise upon any such engagement, contract, or agreement, shall forfeit to his Majesty the value and amount of such sum of money, gift, or reward, over and above the sum of five hundred pounds, which said sum of five hundred pounds, he, she, or they shall forfeit to any person who shall sue for

the same, to be recovered with such costs of suit by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, if the offence be committed in that part of the united kingdom called England and Wales, and in any of his Majesty's courts of record in Dublin if the offence be committed in Ireland, wherein respectively no essoign or wager of law, or more than one imparlance shall be allowed; and if the offence be committed in Scotland, then to be recovered with full costs of suit by summary action or complaint before the Court of Session, or by prosecution before the Court of Justiciary there.

II. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to any money paid or agreed to be paid to or by any person, for any legal expense *bona fide* incurred at or concerning any election.

III. And be it further enacted, That if any person or persons shall, from and after the passing of this act, by himself, herself, or themselves, or by any other person or persons for or on his, her, or their behalf, give, or procure to be given, or promise to give or procure to be given, any office, place, or employment, to any person or persons whatsoever, upon any express contract or agreement that such person or persons, to whom, or to whose use, or on whose behalf such gift or promise shall be made, shall by himself, herself, or themselves, or by any other person or persons at his, her, or their solicitation, request, or command, procure or endeavour to procure the return of any person to serve in Parliament, for any county, stewartry, city, town, borough, cinque port, or place, such person so returned, and so having given or procured to be given, or so having promised to give or procure to be given, or knowing of and consenting to such gift or promise upon any such express contract or agreement, shall be, and is hereby declared and enacted to be disabled and incapacitated to serve in that Parliament, for such coun-

ty, stewartry, city, town, borough, cinque port, or place, and that such person shall be deemed and taken, and is hereby declared and enacted to be deemed and taken, to be no member of Parliament, and enacted to be to all intents, constructions, and purposes, as if he had never been returned or elected a member in Parliament; and any person who shall receive or accept of, by himself, herself, or themselves, or by any other person or persons in trust, for or to the use or on the behalf of such persons, any such office, place, or employment, upon such express contract or agreement, shall forfeit such office, place, or employment, and be incapacitated for holding the same, and shall forfeit the sum of five hundred pounds, which said sum of five hundred pounds shall be recovered, as is herein before enacted; and any person holding any office under his Majesty, who shall give such office, appointment, or place, upon any such express contract or agreement, that the person to whom or for whose use such office, appointment, or place shall have been given, shall so procure or endeavour to procure the return of any person to serve in Parliament, shall forfeit the sum of one thousand pounds, to be recovered in such manner as is herein-before provided.

IV. And be it further enacted, That no person shall be made liable to any forfeiture or penalty by this act created or imposed, unless some prosecution, action, or suit, for the offence committed, shall be actually and legally commenced against such person within the space of two years next after such offence against this act shall be committed, and unless such person shall be actually and legally arrested, summoned, or otherwise served with any original or other writ or process within the same space of time, so as such arrest, summons, or service of any original or other writ or process shall not be prevented by such person absconding or withdrawing out of the jurisdiction of the court out of which such original or other writ or process shall have issued; and

in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded in, and carried on without any wilful delay ; and that all statutes of jeofails and amendments of the law whatever shall and may be construed to extend to all proceedings in any such prosecution, action, or suit.

III. LIMITATION OF PERSONAL PRIVILEGES.

The statute 11. of Geo. II. *cap.* 24, declares, that members of Parliament or their servants may be sued in any action after Parliament has been prorogued or dissolved.

The statute 10. of Geo. III. *cap.* 50, “ for the further preventing the delays of justice by reason of the “ privilege of Parliament,” declares,

That any person or persons shall and may, at any time, commence and prosecute any action or suit in any court of record, or court of equity or of admiralty, and in all causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any Peer or Lord of Parliament of Great Britain, or against any of the knights, citizens, and burgesses, and the commissioners for shires and burghs of the Commons of Great Britain, for the time being, or against their or any of their menial or any other servants, or any other process or proceeding thereupon shall at any time be impeached, stayed, or delayed, by or under colour or pretence of any privilege of Parliament.

II. Provided nevertheless, and be it further enacted, &c. That nothing in this act shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the House of Commons

of Great Britain, for the time being, to be arrested or imprisoned upon any such suit or proceedings.

III. And whereas the process by distringas is dilatory and expensive; for remedy thereof, be it enacted, &c. That the court out of which the writ proceeds may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff, as the said court shall think just, under all the circumstances, to order; and the surplus to be retained until the defendant shall have appeared, or other purpose of the writ be answered.

IV. Provided always, when the purpose of the writ is answered, That then the said issues shall be returned; or if sold, what shall remain of the money arising by such sale shall be repaid to the party distrained upon.

V. And be it further declared and enacted, &c. That obedience may be enforced to any rule of his Majesty's courts of King's Bench, Common Pleas, or Exchequer, against any person entitled to privilege of Parliament, by distress infinite, in case any person or persons entitled to the benefit of such rule shall choose to proceed in that way.

VI. "And whereas an act was made in the twelfth and "thirteenth years of the reign of King William the Third, "intituled, An act for preventing any inconveniences that "may happen by privilege of Parliament;" be it enacted, &c. That from and after the said twenty-fourth day of June, the said act, and also this act, shall extend to that part of Great Britain called Scotland.

ACT OF SEDERUNT.

By act of sederunt, 15. Nov. 1760, every petition and complaint to the Court of Session against proceedings at Michaelmas head courts of freeholders, shall contain the names

only of one pursuer and one defender, unless others be necessarily connected with them.

Wight on Elections.—Connell on Elections.

DECISIONS—QUALIFICATION.

Elliot v. Shaw & Oliver, 1759.—Wright, p. 252. — Baron Norton v. Anderson, 6. July 1813, F. C. — Redfearn v. Maxwell, 7. March 1816.—Dundas v. Campbell & Alexander, 26. May 1812.—Forrester v. Fletcher, &c. 9. Jan. 1755. — Freeholders of Kincardine v. Burnet, 30. July 1745 & 19. June 1746. — Cuningham, 3. Jan. 1754. — Stewart v. Earl of Fife, 20. Feb. 1827, Shaw.—Kibble v. Stewart, 16. June 1814.—Freeholders of Dumfries v. Ferguson, 30. July 1746.—Stewart v. Pollock, 6. March 1760. —Seton v. Shairp, 24. Nov. 1808.—Gibson v. Anderson, 29. June 1819.—Ferguson v. Montgomery, March 1780, Wight, p. 234. — Ferrier v. Erskine, 23. Jan. 1781. — Dalrymple, &c. v. Reid, 4. March 1755.—Since this article was written, a full and accurate statement of the authorities on this subject has been published by Mr Connell, in his Treatise on the Election Laws of Scotland.

PROCEDURE AT ELECTIONS.

The decisions on this branch have also been given by Mr Connell. Reference, however, may be made to the following important cases: Sloan Lawrie, 17. Feb. 1781, Mor. p. 7786. Hotchkis, 6. Dec. 1782.—Sir J. Colquhoun, 25. May 1824, S. & D. III. 59.

PATRONAGE OF CHURCHES.

This subject has, at different times, given rise to much discussion in the Ecclesiastical Court, and to have excited considerable interest throughout the country in general. It is proper therefore to state the fluctuations of the law regarding it, before proceeding to quote the final resolution of the Legislature.

The act 1567, *cap.* 7, relative to the admission of ministers, &c. is as follows :

It is statute and ordained be our Sovereine Lord, with advise of his dearest Regent, and three Estaitis of this present Parliament, that the examination and admission of ministers, within this realme, be only in the power of the kirk, now openlie, and publickly professed withîn the samin : the presentation of laick patronages alwaies reserved to the just and auncient patrones : And that the patroun present ane qualified persoun, within six monethes (after it may cum to his knowledge, of the decease of him quha bruiked the benefice of before) to the superintendent of thay partis quhair the benefice lyes, or uthers havand commission of the kirk to that effect; utherwaies the kirk to have power to dispone the samin to ane qualifeyed person for that time.

Providing that in caice the patron present ane person qualified to his understanding, and failzeing of ane, ane uther within the said sex moneths, and the said superintendent or commissioner of the kirk refusis to receive and admit the person presented be the patron, as said is, it sall be lesum to the patron to appeale to the superintendent, and ministers of that province quhair the benefice lyis, and desire the

person presented to be admitted, quhilk gif they refuse, to appeale to the generall assemblie of this hail realme, be quhome the cause beand decyded, sall take end, as thay decerne and declair.

The statute 1581, *cap.* 102, ordains ministers to be presented by the King and laick patrons.

By the act 1592, *cap.* 114, which first gave a legal establishment to church courts in Scotland, the patron is entitled to present a person properly qualified to a vacant parish. The presbytery are bound "to receive and admit whatsoever qualified minister is presented by the King or laick patrons." In practice, it is understood that the presbytery are the sole judges of the doctrine, qualifications, and character of the presentee: they are only required, after trial and examination, "to ordain and settle him as minister of the parish, provided no relevant objection should be stated to his life, doctrine, and qualifications."

By the act 1592, *cap.* 115, in the event of a minister being deprived of his parish on the ground of disqualification, the presentation belongs to the presbytery of the bounds *jure devoluto*, if the patron fail to present another minister within six months of the vacancy.

The act 1594, *cap.* 196, "for provision of common kirks," declares,

All commoun kirkes to be of the same nature of uther parsonages and vicarages; and ordainis the same commoun kirkes to be conferred be presentation of the lauchfull patron, and sufficient collation to ministers serving thereat, seeing they ar benefices of cure.

There is a temporary act, 1609, *cap.* 12, "anent patronage of forfeited persons."

By an act passed under the usurpation of Cromwell, (1649, *cap.* 39,) the statute 1592, *cap.* 114, was abolished as a grievance, and the right of the people to choose their pastor was recognised. But this change was of short duration.

At the Restoration, the patron's right was recovered.

The act 1661, *cap.* 36, was passed for this purpose, but it continued in force a few years only.

There was another temporary statute, 1662, *cap.* 3, "concerning benefices possessed with presentations from the lawful patrons."

Again, at the Revolution, the right of election was vested in the heritors, elders, and heads of families. The act 1690, *cap.* 23, deprives patrons of the right of presentation, without prejudice however to the rights of the ministers already appointed by them. It declares that the heritors (being Protestant,) and elders are to name a person to the congregation; and in the event of any disapprobation on the part of the congregation, the presbytery of the bounds were to settle the dispute. If the heritors and elders failed to apply "to the presbytery for the call and choice of a minister within the space of six months after a vacancy, then the presbytery may proceed to provide the said parish, and plant a minister in the church, *tanquam jure devotuto*." As a compensation to the patrons for the right of presentation thus taken away, this statute

Ordains the heritors and liferenters of each parish, and the town-councils for the burgh, to pay to the said patrons, betwixt and Martinmas next, the sum of six hundred merks proportionally effeiring to their valued rents in the said parish, viz. two parts by the heritors, and a third part by the

liferenters, deducing always the patron's own part effeiring to his proportion as an heritor. This act also declares, that the right of the teinds of the said parishes which are not heritably disposed shall belong to the said patrons, with the burden always of the ministers' stipends, tacks, and prorogations already granted of the said teinds, and of such augmentations of stipends, future prorogations, and erections of new kirks as shall be found just and expedient: Providing the said patrons, getting right to the teinds by virtue of this present act, and who had no right thereto of before, shall be, likeas they are hereby obliged to sell to each heritor the teinds of his own lands at the rate of six years' purchase, as the same shall be valued by a commission for valuation of teinds.

The act 1693, *cap. 25*, "anent parsonages," is as follows :

Our Sovereign Lord and Lady, the King and Queen's Majesties, considering, that by the twenty-third act of the second session of this current Parliament, concerning patronages, it is statute and declared, That the right of the teinds of parishes, whereof patrons had formerly the presentation by that act abolished; and which teinds are not heritably disposed, should, by virtue of that act, belong to the patrons, with the burden always of the ministers' stipends, and others therein express: And that it is just and reasonable, That the said benefit should be extended to the patrons of all parsonages and other benefices without exception, do therefore with advice and consent of the Estates of Parliament, statute, ordain and declare, That the foresaid right of the teinds granted to patrons, as said is, shall be extended to the teinds of all parsonages, and other benefices; and that the same shall belong to the patrons, with the burden specified in the said act, and further, with the burden of provisions to two

ministers in one parish, if the commission shall think fit: Providing always, That where the beneficed person, being a minister, having a cure, is in possession of the foresaid teinds as titular thereof, he shall continue and remain in the possession thereof, ay and while the foresaid patron shall obtain a just and reasonable stipend, to be modified and settled upon him, by the Commission for plantation of kirks, in lieu of his said right, to the teinds hereby granted to the patron as said is: Which right shall be without prejudice of any other separate right that the said patrons either have, or may have to the said teinds, as accords of the law.

The act 1698, *cap.* 2, “ for preventing disorders in “ the supplying and planting of vacant churches,”

Strictly prohibits and discharges all persons whatsoever to make any opposition by rabbling, tumult, or any other manner of violence, to any minister lawfully authorised and sent to preach at any vacant church within the kingdom, either for supplying of the said vacancy, or to exerce the ministerial function as fixed minister of the parish, and that under the pains of one hundred pounds upon every heritor or liferenter, and of fifty merks upon any other unlanded person *toties quoties* ; and for such delinquents as are not able to pay, that they shall be punished in their persons, as the Lords of Privy Council shall see cause : And further, for the better repressing of the foresaid opposition by rabbling, tumult, or any other manner of violence, his Majesty, with advice and consent foresaid, ratifies and extends to the case thereof, the seventh act of the Parliament 1683, intituled, Act anent invading of ministers, and that in manner and with the alterations following : And therefore statutes and ordains, That wherever any such rabbling or tumult happens, the heritors and liferenters in whose bounds, whether within or without the parish, any of the persons delated and accused as guilty of, or accessory to the same, dwells or resides, shall

be holden, upon intimation made to them by the minister injured, or by any in name of the presbytery who sent him, to produce the foresaid persons guilty, and that they may be conveyened before the Lords of his Majesty's Privy Council for that effect: Certifying the said heritors and liferenters, That if they either failzie to produce the said persons, if residing within their bounds when the foresaid intimation shall be made; or if they shall suffer the said persons withdrawing or absenting the time of the said intimation, thereafter to reside and haunt openly within their bounds by the space of twenty days: then, and in these cases, the said heritors and liferenters shall be esteemed connivers with the delinquents, and liable as guilty, art and part with them in their foresaid delinquency: And because, notwithstanding of the act and proclamation of council made in the year 1690, for the delivering of the keys of vacant churches to the presbyteries, or the persons having their order, the persons havers thereof do shift the same from hand to hand: therefore his Majesty, with advice and consent foresaid, statutes and ordains, That where, and whenever after requisition made by the presbytery to the beddal or havers of the said keys, the same are refused and not given up, then the next magistrate, sheriff, lord of regality, or bailie, and their deputes, or any justice of peace when required by the presbytery, or any from them, shall repair to the said kirk, and there make open and patent the doors thereof, and put new locks upon the same, and deliver the keys to the said presbytery, or their order, for their free use making of the same, certifying the said inferior magistrate, who shall refuse when required to make the church patent in manner foresaid, he shall be liable in the fine of one hundred pound Scots, to be inflicted upon him by the Lords of Privy Council, for the use of the poor of the parish, by and attour the presbytery's expenses.

At length the right of presentation was restored to

patrons by the 10. of Q. Anne, *cap.* 12, which now constitutes the law of patronage. It is in these words :

Whereas by the ancient laws and constitution of that part of Great Britain called Scotland, the presenting of ministers to vacant churches did of right belong to the patrons, until by the twenty-third act of the second session of the first Parliament of the late King William and Queen Mary, held in the year 1690, (intituled, Act concerning patronages,) the presentation was taken from the patrons, and given to the heritors and elders of the respective parishes ; and in place of the right of presentation, the heritors and liferenters of every parish were to pay to the respective patrons a small and inconsiderable sum of money, for which the patrons were to renounce their right of presentation in all times thereafter : And whereas by the fifteenth act of the fifth session, and by the thirteenth act of the sixth session of the first Parliament of the said King William, the one intituled, An act for encouraging of preachers at vacant churches be-north Forth, and the other intituled, Act in favours of preachers be-north Forth, there are several burdens imposed upon vacant stipends, to the prejudice of the patron's right of disposing thereof : And whereas that way of calling ministers has proved inconvenient, and has not only occasioned great heats and divisions among those who by the aforesaid act were entitled and authorised to call ministers, but likewise has been a great hardship upon the patrons, whose predecessors had founded and endowed those churches, and who have not received payment or satisfaction for their right of patronage from the aforesaid heritors or liferenters of the respective parishes, nor have granted renunciations of their said rights on that account ; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority

of the same, That the aforesaid act made in the year 1690, (intituled, Act concerning patronages,) in so far as the same relates to the presentation of ministers by heritors and others therein mentioned, be and is hereby repealed and made void; and that the aforesaid fifteenth act of the fifth session, and thirteenth act of the sixth session of the first Parliament of King William, be and are hereby likewise repealed and made void; and that in all time coming, the right of all and every patron or patrons to the presentation of ministers to churches and benefices, and the disposing of the vacant stipends for pious uses within the parish, be restored, settled, and confirmed to them, the aforesaid acts, or any other act, statute, or custom to the contrary in any wise notwithstanding; and that from and after the first day of May 1712, it shall and may be lawful for her Majesty, her heirs and successors, and for every other person or persons who have right to any patronage or patronages of any church or churches whatsoever, in that part of Great Britain called Scotland, (and who have not made and subscribed a formal renunciation thereof under their hands,) to present a qualified minister or ministers to any church or churches whereof they are patrons, which shall, at any time after the said 1st day of May, happen to be vacant; and the presbytery of the respective bounds shall and is hereby obliged to receive and admit in the same manner such qualified person or persons, minister or ministers, as shall be presented by the respective patrons, as the persons or ministers presented before the making of this act ought to have been admitted.

Provided always, That in case any patron or patrons have accepted of, and received any sum or sums of money from the heritors or liferenters of any parish, or from the magistrates or town-council of any borough, in satisfaction of their right of presentation, and have discharged or renounced the same under their hand, that nothing herein shall be construed to restore such patron or patrons to their right of

presentation, any thing in this present act to the contrary notwithstanding.

Provided also, and it is hereby enacted by the authority aforesaid, That in case the patron of any church aforesaid shall neglect or refuse to present any qualified minister to such church that shall be vacant the said 1st day of May, or shall happen to be vacant at any time thereafter, for the space of six months, after the said 1st day of May, or after such vacancy shall happen, that the right of presentation shall accrue and belong for that time to the presbytery of the bounds where such is, who are to present a qualified person for that vacancy, *tanquam jure devoluto*.

And be it further enacted and declared by the authority aforesaid, That the patronage and right of presentations of ministers to all churches which belonged to archbishops, bishops, or other dignified persons, in the year 1689, before episcopacy was abolished, as well as those which formerly belonged to the crown, shall and do of right belong to her Majesty, her heirs and successors, who may present qualified ministers to such church or churches, and dispose of the vacant stipends thereof for pious uses, in the same way and manner as her Majesty, her heirs and successors, may do in the case of other patronages belonging to the crown.

Declaring always, That nothing in this present act contained shall extend, or be construed to extend to repeal and make void the aforesaid twenty-third act of the second session of the first Parliament of the late King William and Queen Mary, excepting so far as relates to the calling and presenting of ministers, and to the disposing of vacant stipends in prejudice of the patrons only.

And be it further enacted by the authority aforesaid, That all and every patron and patrons, who have not taken, or shall not take, at any time before his or their presenting a minister or ministers to any church or churches aforesaid, the oath appointed to be taken by persons in public trust,

by an act made in the sixth year of her Majesty's reign, (intituled, An act for the better security of her Majesty's person and government,) shall, and are hereby obliged, at their signing such presentation, to take and subscribe the aforesaid oath before the sheriff of the shire, steward of the stewartry, or before any two or more justices of the peace of the county or place where such patron resides; and in case such patron or patrons, who have not formerly taken the aforesaid oath, refuse or neglect to take the same at the signing of such presentation, that the same shall be and is hereby declared to be void, and the right of presentation, and of the disposing the vacant stipends for that time, shall belong to her Majesty, her heirs and successors, who may present a qualified person to such church or benefice, at any time within the space of six months after such neglect or refusal; any thing in this present act, or in any other act, to the contrary notwithstanding.

And whereas the right of patronage of churches may belong to papists; be it therefore enacted by the authority aforesaid, That any person or persons, known or suspected to be papists, and who have a right of presenting ministers, shall be obliged, at or before his or their signing any presentation, to purge himself of popery, by taking and signing the *formula* contained in the third act of the Parliament of Scotland, held in the year 1700, (intituled, Act for preventing the growth of popery); and in case such popish patron or patrons shall refuse to take and subscribe the *formula* aforesaid, the same being tendered to him or them by the sheriff of the shire, steward of the stewartry, or any two or more justices of the peace within their respective jurisdiction, who are hereby empowered to administer the same, the presentation, and the right of disposing the vacant stipends, shall for that time belong to her Majesty, her heirs and successors, who may present any qualified person or persons within six months after such neglect or refusal; any thing

in this present act, or any other act, to the contrary notwithstanding.

For about twenty years after the passing of this act, it was the occasion of much contention and turbulence. The church courts could not disregard the law of patronage as thus established. But as it was extremely unpopular in the country, they evaded it a little, on the ground that the proposed incumbent, besides being properly qualified, and of unexceptionable character, should have the concurrence of the people who were to be under his ministry. This concurrence was expressed in a written paper or *call* signed by such of the parish as approved. No precise rule or proportion of signatures to this *call* was ever ascertained, which obliged the church court to proceed. But it was understood to represent the opinion of the majority of the parish. The presbyteries found it a disagreeable, obnoxious, and sometimes even a dangerous duty to proceed with the induction of an unpopular clergyman : special committees were therefore appointed for this purpose ; and, in some instances, they seem to have required the aid of a military force. For a long series of years, instructions were given annually to the Commission of the General Assembly, “ to make due application to the King and “ Parliament, for redress of the grievance of patronage, “ in case a favourable opportunity for doing so should “ occur.” But these instructions were omitted in 1784, and have never since been renewed.

All ministers, before being licensed, are required to take and subscribe the oath of allegiance to his Majesty, in virtue of the statute 5. of Geo. I. *cap.* 28, “ for

“ making more effectual the laws appointing the oaths
“ for security of the Government, to be taken by mi-
“ nisters and preachers in churches and meeting-houses
“ in Scotland.”

In the statute 48. of Geo. III. *cap.* 50. § 4, which restrains the crown generally from granting the reversion of offices, there is the following exception : “ That
“ nothing in this act shall be construed to extend to
“ prohibit the appointment of assistants and successors
“ to the parochial clergy of Scotland.” This right is frequently exercised by patrons.

Erskine, I. 5. 9.—Connell on Tithes, II. 190.’

DECISIONS.

Grant, 7. Feb. 1788, Morr. 9945.—Tait, 22. Jan. 1778, affirmed on appeal, *ib.* 9938.

PAWNBROKERS.

There were several temporary statutes relative to the trade of pawnbrokers, of which it will be sufficient to mention the dates : they are all superseded by a long enactment, which must be quoted *verbatim*.

The act 30. of Geo. II. *cap.* 24, “ for preventing
“ the unlawful pawning of goods, and the more easy
“ redemption of goods pawned.”

The act 24. of Geo. III. *cap.* 42, (2d session,) was passed to explain, amend, and render more effectual the preceding act. This act was again continued for a limited time, by 26. of Geo. III. *cap.* 92.

The act 27. of Geo. III. *cap.* 37, "for further regulating the trade and business of pawnbrokers," was limited to one year; but repeated in part, and continued for another year, by 28. of Geo. III. *cap.* 50.

For the same purpose, the act 29. of Geo. III. *cap.* 57, was passed; continued for a year by 31. of Geo. III. *cap.* 52; and amended, and in part repealed, by 33. of Geo. III. *cap.* 53.

There was also another temporary act, 36. Geo. III. *cap.* 87.

And, lastly, the act 39. and 40. of Geo. III. *cap.* 99, by which this trade is now regulated. It is in the following terms:

"Whereas, an act was passed in the 36th year of the reign of his present Majesty, intituled, An act for regulating the trade or business of pawnbrokers, which was to be in force for three years, and from thence until the end of the then next session of Parliament, and no longer; and whereas it is expedient that provision should be made for more effectually regulating the trade or business of pawnbrokers, from the time when the said act will expire;" May it therefore please your Majesty that it may be enacted, and be it enacted, That the said act passed in the 36th year of the reign of his present Majesty, for regulating the trade or business of pawnbrokers, shall be, and the same is hereby declared to be in full force and effect until the expiration of the present session of Parliament, and from and after such expiration this act shall commence and take effect, and be put in execution, instead of the said recited act.

II. And be it further enacted, That upon and from the commencement of this act, it shall be lawful for all persons using and exercising the trade or business of a pawnbroker to demand, receive, and take of and from all and every person and persons applying or offering to redeem any goods

or chattels pawned or pledged with such pawnbroker, a profit, after the following rates, over and above the principal sum and sums which shall have been lent and advanced upon the respective pledge or pledges, before any such pawnbroker shall be obliged to re-deliver the same (*videlicet.*)

For every pledge upon which there shall have been lent any sum not exceeding two shillings and sixpence, the sum of one halfpenny for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired; for every pledge upon which there shall have been lent the sum of five shillings, one penny; for every pledge upon which there shall have been lent seven shillings and sixpence, one penny halfpenny; for every pledge upon which there shall have been lent ten shillings, two pence; for every pledge upon which there shall have been lent twelve shillings, twopence halfpenny; for every pledge upon which there shall have been lent fifteen shillings, threepence; for every pledge upon which there shall have been lent seventeen shillings and sixpence, threepence halfpenny; for every pledge upon which there shall have been lent one pound, fourpence, and so on progressively, and in proportion for any sum not exceeding forty shillings; for every pledge upon which there shall have been lent forty-two shillings, eightpence; and for every pledge upon which there shall have been lent any sum exceeding forty-two shillings, and not exceeding ten pounds, at and after the rate of threepence, and no more, for the loan of every twenty shillings, for all such money so lent by the calendar month, including the current month, and so in proportion for any fractional sum; which said several sums shall be taken in lieu of, and as a full satisfaction for all interest due, and charges for warehouse room.

III. And be it further enacted, That in all cases where

any intermediate sum lent upon any pawn or pledge shall exceed the sum of two shillings and sixpence, and ~~not exceed the sum of forty shillings~~, the person lending the same shall and may take by way of profit as aforesaid, at and after the rate of fourpence, and no more, for the loan of twenty shillings by the calendar month, including the current month as aforesaid.

IV. Provided always, and be it further enacted, That in all cases where the sum to be demanded, received, and taken in by any pawnbroker or pawnbrokers, his, her, or their servant, or agent of and from any person or persons applying or offering to redeem any goods or chattels pawned or pledged with such pawnbroker or pawnbrokers, either as profit upon any sum lent, or as part principal and part profit, shall amount to a total sum, of which the piece of money of the lowest denomination shall be one farthing; and where the person or persons so applying or offering to redeem such goods or chattels shall have paid down the sum due for such principal and profit, or for such profit only, (as the case may be,) except the last remaining farthing, and shall not be able to produce and pay to such pawnbroker or pawnbrokers, his, her, or their servant or agent, a current farthing, and which shall be to the satisfaction and liking of such person or persons to receive the same, but shall in lieu thereof tender to such person or persons to receive the same one halfpenny, in order to discharge the said remaining farthing so due as aforesaid, the said pawnbroker or pawnbrokers, his, her, or their servant or agent to whom such tender of a halfpenny for such purpose as aforesaid shall be made, shall, in exchange thereof, deliver unto such person or persons so redeeming goods as aforesaid, one good and lawful farthing of the current coin of this kingdom, or in default thereof, shall wholly abate the said remaining farthing from the total sum to be received by him or them of such person or persons so redeeming goods or chattels as aforesaid.

V. Provided always, and be it further enacted, That in all cases where the party or parties entitled to and applying for the redemption of goods pawned, within the space of seven days after the expiration of the first calendar month, after the same shall have been pledged, he, she, or they, shall and may be at liberty to redeem the same without paying any thing by way of profit to the pawnbroker for the said seven days, or such part thereof as shall then have elapsed; and that in all cases where the party or parties so entitled, and applying as aforesaid, after the expiration of the said first seven days, and before the expiration of the first fourteen days of the second calendar month, he, she, or they, shall and may be at liberty to redeem such goods, upon paying the profit payable for one calendar month, and the half of another calendar month, to the pawnbroker; but that in all cases where the party or parties so entitled and applying as aforesaid after the expiration of the said first fourteen days, and before the expiration of the said second calendar month, it shall be lawful for the pawnbroker to demand and take the profit of the whole second month; and that the like regulation and restriction shall take place and be in force in every subsequent calendar month wherein application shall be made for redeeming goods pawned.

VI. And be it further enacted, That all and every person and persons who, from and after the commencement of this act, shall take by way of pawn or pledge of or from any person or persons whomsoever, any goods or chattels, of what kind soever the same shall be, and whereon shall be lent any sum of money exceeding five shillings, shall forthwith, and before he, she, or they, shall or may advance or lend any money upon such pawn or pledge, enter or cause to be entered, in a fair and regular manner, in a book or books to be kept by him, her, or them, for that purpose, a description of the goods or chattels which he, she, or they, shall receive in pawn, pledge, or exchange, and also the sum of money to

be advanced or lent thereon, with the day of the month and year on which, and the name of the person or persons by whom such goods or chattels are so pawned, pledged, or exchanged, and the name of the street and number of the house, if the same shall be said to be numbered, where such person shall abide, and whether such person or persons is or are a lodger in or the keeper of such house, by using the letter "L." if a lodger, and the letter "H." if a housekeeper, and also the name and place of abode of the owner or owners of such goods and chattels, according to the information of the person pawning, pledging, or exchanging the same, into all which circumstances the pawnbroker is hereby required to inquire of the party pawning, before any money shall be lent or advanced; and in all cases where the money lent on any such goods or chattels shall not exceed the sum of five shillings, such entry shall be made in such books or books by all and every such person and persons so taking the same by way of pawn, pledge, or exchange, as aforesaid, within four hours next after the said goods and chattels shall have been so pawned, pledged, or exchanged, as aforesaid; and every pledge upon which shall be lent any sum of money above ten shillings shall be entered in the manner aforesaid, in a books or books to be kept for that purpose, separate and apart from all other pledges whatever; and every such entry of such pledge whereon shall be lent any sum of money exceeding ten shillings, shall be numbered in such book or books progressively as they are received in pawn, in the manner following, (*viz.*) the first pledge that is received in pawn in the month of September next, shall be numbered No. 1, the second No. 2, and so on progressively until the end of the month, and the first pledge that is received in the next month shall be numbered No. 1, and the second No. 2, and so on progressively, and in like manner until the end of the month; and the like regulation with respect to the numbers of all pledges above ten shillings, shall be lent any sum

exceeding ten shillings as aforesaid, shall be fairly and legibly written or printed the number of the entry of such pledge so entered in such book or books as aforesaid, and every such person shall, at the time of the taking of every pawn, pledge, or exchange whatsoever, give to the person or persons so pawning, pledging, or exchanging the same, a note or memorandum fairly and legibly written or printed, or in part written and in part printed, containing therein in like manner, a description of the goods and chattels which he, she, or they, have received in pawn, pledge, or exchange, and also the sum of money advanced thereon, with the day of the month and year on which, and the name and place of abode, and number of the house, if said to be numbered, of the person or persons by whom such goods or chattels are so pawned, pledged, or exchanged, and whether such person is a lodger or housekeeper as aforesaid, by using the letter "L." if a lodger, and the letter "H." if a housekeeper, and also the name and place of abode of the owner or owners thereof, according to the information aforesaid; and upon which said note or memorandum, or on the back whereof, shall be moreover fairly written or printed, the name and place of abode of the pawnbroker giving the same, which said note or memorandum the party and parties pawning, pledging, or exchanging the said goods or chattels shall, and he, she, or they, is and are hereby required to accept and take in all cases, and the pawnbroker shall not receive and retain such pledge, unless the party pledging or offering to pledge the same shall accept and take such note or memorandum; and every such note where the sum lent shall be less than five shillings shall be delivered gratis; and where the sum shall be five shillings or upwards, and less than ten shillings, such pawnbroker shall and may take one halfpenny for the same; and where the sum lent shall be ten shillings or upwards, and less than twenty shillings, such pawnbroker shall and may take one penny for the same; and where the sum lent shall

be twenty shillings or upwards, and less than five pounds, the sum of twopence for the same ; and where the sum lent shall be five pounds or upwards, the sum of fourpence, and no more ; and which note shall be produced to the pawnbroker, before he or she shall be obliged to redeliver the respective goods or chattels, except as herein-after is excepted.

VII. And be it further enacted, That in all cases where any goods or chattels pawned or pledged shall be redeemed, the pawnbroker, of whom the same shall be redeemed, shall, at the time of such redemption, fairly and legibly write or indorse, or cause to be written or indorsed, upon every duplicate respecting such pawn or pledge, the amount of the profit taken by him, or on his account, on the money lent upon such goods or chattels so redeemed, and shall keep such duplicate in his custody for the space of one year next following.

VIII. And be it further enacted, That from and after the commencement of this act, if any person or persons shall knowingly and designedly pawn, pledge, or exchange, or unlawfully dispose of the goods or chattels of any other person or persons, not being employed or authorised by the owner or owners thereof so to do, it shall be lawful for any justice to grant his warrant to apprehend any person so offending, and if, he, she, or they shall be thereof convicted, by the oath of any credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any justice or justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed, (which oath every such justice or justices, as aforesaid, is and are hereby empowered and required to administer,) every such offender shall, for every such offence, forfeit any sum not exceeding five pounds nor less than twenty shillings, and also the full value of the goods or chattels so pawned, pledged, exchanged, or disposed of, such value to be ascertained by such justice or justices ; and in case

the said forfeitures shall not be forthwith paid, the justice or justices of the peace as aforesaid, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or some other public prison of the county, riding, division, city, liberty, town, or place wherein the offender or offenders shall reside or be convicted, there to remain and be kept to hard labour for a space not exceeding three calendar months, unless the said forfeitures shall be sooner paid; and if within three days before the expiration of the said term of commitment the said forfeiture shall not be paid, the said justice or justices, at his and their discretion, may order the person or persons so convicted to be publicly whipped in the house of correction or prison to which the offender or offenders shall have been committed, or in some other public place of the county, riding, division, city, liberty, town, or place where the offence shall have been committed, as to such justice or justices shall seem proper; and the said respective forfeitures, when recovered, shall be applied towards making satisfaction thereon to the party or parties injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by the justice or justices before whom such conviction shall be had; but if the party or parties injured shall decline to accept of such satisfaction and costs, or if there shall be any overplus of the said respective forfeitures after making such satisfaction and paying such costs as aforesaid, then such respective forfeitures, or the overplus thereof as the case shall happen, shall be paid and applied to, and for the use of, the poor of the parish or place where such offence shall have been committed, and shall be paid to the overseers of the poor of such parish or place for that purpose.

IX. And be it further enacted, That if any person or persons whomsoever shall counterfeit, forge, or alter, or cause or procure to be counterfeited, forged or altered, any such note or memorandum as aforesaid, or shall utter, vend or

sell any such note as aforesaid, knowing the same to be counterfeited, forged, or altered, with intent to defraud any person or persons whomsoever, in all, or any or either of the said cases, such person or persons shall be punished in manner herein after mentioned ; and it shall be lawful for any person or persons, his, her, or their servants or agents to whom any note shall be uttered or produced, shewn or offered, which he, she, or they shall have reason to suspect to have been counterfeited, forged, or altered, to seize and detain such person or persons uttering, producing, shewing or offering the same, and to deliver him, her, or them, as soon as conveniently may be, into the custody of a constable or other peace officer, who shall and is hereby required, as soon as conveniently may be, to convey such person or persons before some justice or justices of the peace for the county, riding, division, city, liberty, town or place wherein the offence shall be supposed to have been committed ; and if upon examination it shall appear to the satisfaction of such justice or justices, that the person or persons charged with having committed any such offence is or are guilty thereof, then and in every such case, the said justice or justices is and are hereby authorised and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty, town or place wherein the offence shall be committed, there to be imprisoned for any time not exceeding the space of three calendar months, at the discretion of such justice or justices.

X. And be it further enacted, That in case any person or persons who shall offer by way of pawn, pledge, exchange, or sale, any goods or chattels, shall not be able, or shall refuse to give a satisfactory account of himself, herself or themselves, or of the means by which he, she, or they become possessed of such goods or chattels, or if there shall be any other reason to suspect that such goods or chattels are stolen, or otherwise illegally or clandestinely obtained, or

if any person or persons not entitled, nor having any colour of title by law to redeem goods or chattels in pledge or pawn, shall attempt or endeavour to redeem the same, it shall be lawful for any person or persons, his, her, or their servant or agents to whom such goods or chattels shall be so offered, or with whom such goods and chattels are in pledge, to seize and detain such person or persons and the said goods or chattels, and to deliver such person or persons immediately into the custody of a constable or other peace officer, who shall and is hereby required, as soon as may be, to convey such person or persons, and the said goods and chattels so offered, before some justice or justices of the peace for the county, riding, division, city, liberty, town or place wherein the offence shall be supposed to have been committed; and if such justice or justices shall, upon examination and inquiry, have cause to suspect that the said goods or chattels were stolen, or illegally or clandestinely obtained, or that the person or persons offering or endeavouring to redeem the same shall not have any pretence or colour of right to redeem the same, it shall be lawful for such justice or justices to commit such person or persons into safe custody for such reasonable time as shall be necessary for obtaining proper information on the subject, in order to be further examined; and if upon either of the said examinations, it shall appear to the satisfaction of such justice or justices that the said goods or chattels were stolen, or illegally or clandestinely obtained, or that the person or persons offering, or endeavouring to redeem the same, hath or have not any pretence or colour of right so to do, the said justice or justices is and are hereby authorised and required to commit the party or parties offending to the common gaol or house of correction of the county, riding, division, city, liberty, town or place wherein the offence shall be committed, there to be dealt with according to law, where the nature of the offence shall authorise such commitment by any other law; and where the nature of the offence shall not authorise

such commitment by any other law, then such commitment shall be for any time not exceeding three calendar months, at the discretion of such justice or justices.

XI. And be it further enacted, That from and after the commencement of this act, if any person or persons shall knowingly buy or take in as a pledge or pawn, or in exchange, any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials whatsoever plainly intended for the composing or manufacturing of any goods, after such goods or materials respectively are put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials are completed or finished for the purposes of wear or consumption, or any linen or apparel, which goods, materials, linen, or apparel, are or shall be intrusted to any person or persons to wash, scour, iron, mend, manufacture, work up, finish or make up, and shall be convicted of the same on the oath of one credible witness, or on confession of the party or parties before one or more justice or justices, every such person or persons shall forfeit double the sum given for or lent on the same, to be paid to the poor of the parish where the offence is committed, to be recovered in the same manner as any other forfeitures are by this act directed to be recovered, and shall likewise be obliged to restore the said goods and materials to the owner or owners thereof in the presence of the said justice or justices.

XII. And be it further enacted, That if the owner or owners of any goods of any manufacture, or of any part or branch of any manufacture, either mixed or separate, or any materials whatsoever plainly intended for the composing or manufacturing of any goods, after such goods or materials respectively are put into a state or course of manufacture, or into a state for any process or operation to be thereupon or therewith performed, and before such goods or materials

are completed or finished for the purposes of wear or consumption, or any linen or apparel, which goods, materials, linen, or apparel, are or shall be so intrusted as aforesaid, unlawfully pawned, pledged, or exchanged, shall make out either on his, her or their oath, or by the oath of any credible witness, or, being one of the people called Quakers, by solemn affirmation before any justice or justices of the peace within his or their jurisdiction, that there is just cause to suspect that any person or persons within the jurisdiction of any such justice or justices, hath or have taken to pawn or by way of pledge or exchange any such goods or materials, linen, or apparel, so intrusted as aforesaid, of such owner or owners, and without the privity or authority of such owner or owners thereof, and shall make appear to the satisfaction of any such justice or justices probable grounds for such the suspicion of the owner or owners thereof, then and in any such case any justice or justices of the peace within his or their jurisdiction may issue his or their warrant for searching, within the hours of business, the house, warehouse, or other place of any such person or persons who shall be charged on oath or affirmation as aforesaid, as suspected to have received or taken in pawn, or by way of pledge or in exchange, any such goods, or materials, linen, or apparel, without the privity of or authority from the owner or owners thereof; and if the occupier or occupiers of any house, warehouse, or other place, wherein any such goods, materials, linen or apparel, shall on oath, or affirmation as aforesaid, be charged or suspected to be, shall, after the commencement of this act, on request made to him, her, or them, to open the same, by any peace officer authorised to search there by warrant from any justice or justices of the peace for the county, riding, division, city, liberty, town or place, in which such house, warehouse, or other place shall be situate, refuse to open the same, and permit the same to be searched, it shall

be lawful for any peace officer to break open any such house, warehouse, or other place, within the hours of business, and to search as he shall think fit therein for the goods, materials, linen, or apparel suspected to be there, doing no wilful damage; and no pawnbroker or other persons shall oppose or hinder any such search; and if upon the search of house, warehouse, or other place of any such suspected person or persons as aforesaid, any of the goods, materials, linen or apparel, which shall have been so pawned, pledged, or exchanged as aforesaid, shall be found, and the property of the owner or owners thereof shall be made out to the satisfaction of any such justice or justices, by the oath of one or more credible witness or witnesses, or if any such witness or witnesses shall be of the people called Quakers by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such justice or justices shall thereupon cause the goods, materials, linen or apparel found on any such search, and pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner or owners thereof.

XIII. And be it further enacted, That if the owner or owners of any goods or chattels unlawfully pawned, pledged, or exchanged, shall make out, either on his, her, or their oath, or by the oath of any credible witness, or being one of the people called Quakers, by solemn affirmation, before any justice or justices of the peace within his or their jurisdiction, that such owner or owners hath or have had his, her, or their goods or chattels unlawfully obtained or taken from him, her, or them, and that there is just cause to suspect that any person or persons within the jurisdiction of any such justice or justices hath or have taken to pawn, or by way of pledge, or in exchange, any goods or chattels of such owner or owners, and without the privity or authority of such owner or owners thereof, and shall make appear, to the satisfaction of any such justice or justices, probable grounds for such the

suspicion of the owner or owners thereof, then and in any such case any justice or justices of the peace within his or their jurisdiction may issue his or their warrant for searching, within the hours of business, the house, warehouse, or other place of any such person or persons who shall be charged on oath or affirmation as aforesaid as suspected to have received or taken in pawn, or by way of pledge, or in exchange, any such goods or chattels, without the privity of or authority from the owner or owners thereof; and if the occupier or occupiers of any house, warehouse, or other place, wherein any such goods or chattels shall on oath or affirmation as aforesaid be charged or suspected to be, shall, after the commencement of this act, on request made to him, her, or them, to open the same by any peace officer, authorised to search there by warrant from a justice or justices of the peace for the county, riding, division, city, liberty, town or place, in which such house, warehouse, or other place shall be situate, refuse to open the same, and permit the same to be searched, it shall be lawful for any peace officer to break open any such house, warehouse, or other place within the hours of business, and to search as he shall think fit therein, for the goods or chattels suspected to be there, doing no wilful damage; and no pawnbroker or other person or persons shall oppose or hinder any such search; and if upon the search of the house, warehouse, or other place of any such suspected person or persons as aforesaid, any of the goods or chattels which shall have been so pawned, pledged, or exchanged as aforesaid, shall be found, and the property of the owner or owners, from whom the same shall have been unlawfully obtained or taken, shall be made out to the satisfaction of any such justice or justices by the oath of one or more credible witness or witnesses, or if any such witness or witnesses shall be of the people called Quakers by solemn affirmation, or by the confession of the person or persons charged with any such offence, any such justice or justices

shall thereupon cause the goods and chattels found on any such search, and pawned, pledged, or exchanged as aforesaid, to be forthwith restored to the owner or owners thereof.

XIV. And be it further enacted, That from and after the commencement of this act, if any goods or chattels shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the principal sum of ten pounds, and the profit thereof, and if within one year after the pawning or pledging thereof, proof having been made on oath or affirmation as aforesaid, by one or more credible witness or witnesses, and by producing the note or memorandum directed to be given by this act as aforesaid, before any justice or justices, to the satisfaction of any such justice or justices of the pawning or pledging of any such goods or chattels within the said space of one year, or one year and three months, as the case may be, any such pawner or pawners who was or were the real owner or owners of such goods or chattels at the time of the pawning or pledging thereof, his, her, or their executors, administrators, or assigns, shall tender unto the person or persons who lent on the security of the goods or chattels pawned, his executors, administrators, or assigns shall thereupon, without shewing reasonable cause for so doing to the satisfaction of such justice or justices, neglect or refuse to deliver back the goods or chattels so pawned, for any sum or sums of money not exceeding the said principal sum of ten pounds, to the person or persons who borrowed the money thereon, his, her, or their executors, administrators, or assigns, then and in any such case, on oath or affirmation as aforesaid thereof made by the pawner or pawners thereof, his, her, or their executors, administrators, or assigns, or some other credible person, any justice or justices of the peace for the county, riding, division, city, liberty, town, or place, where the person or persons who took such pawn as aforesaid, his executors,

administrators, or assigns shall dwell, on the application of the borrower or borrowers, his, her, or their executors, administrators, or assigns, is and are hereby required to cause such pawner, his, her, or their executors, administrators, or assigns, within the jurisdiction of the justice or justices, to come before such justice or justices; and such justice or justices is and are hereby authorised and required to examine on oath, or solemn affirmation as the case may require, the parties themselves, and such other credible person or persons as shall appear before him or them touching the premises; and if tender of the principal money due, and all profit thereon as aforesaid, shall be proved by oath or affirmation as aforesaid to have been made, such principal money not exceeding the said sum of ten pounds, to the lender or lenders thereof, his, her, or their executors, administrators, or assigns, by the borrower or borrowers of such principal money, his, her, or their executors, administrators, or assigns, within the said space of one year, or one year and three months, as the case may be, after the said pawning or pledging of the goods or chattels, then on payment by the borrower or borrowers, his, her, or their executors, administrators, or assigns of such principal money, and the profit due thereon as aforesaid, to the lender or lenders, his, her, or their executors, administrators, or assigns, and in case the lender or lenders, &c. shall refuse to accept thereof, on tender thereof to him, her, or them, made by the borrower or borrowers thereof, his, her, or their executors, administrators, or assigns, before any such justice or justices, such justice or justices shall thereupon, by order under his or their hand or hands, direct the goods or chattels so pawned forthwith to be delivered up to the pawner or pawners thereof, his, her, or their executors, administrators, or assigns; and if the person or persons who shall have lent any principal sum or sums of money, not exceeding in the whole the said sum of ten pounds, on any goods or chattels

pawned, his, her, or their executors, administrators, or assigns, shall neglect or refuse to deliver up or make satisfaction for the goods or chattels which shall be so proved to the satisfaction of such justice or justices as aforesaid, to have been so pawned, as any such justice or justices of the peace as aforesaid shall order and direct, then any such justice or justices shall, and is and are hereby authorised and required to commit the party or parties so refusing to deliver up or make satisfaction for the same, to the house of correction, or some other public prison for the county, riding, division, city, liberty, town, or place wherein the offender or offenders shall reside, or be convicted, there to remain without bail or mainprize, until he, she, or they, shall deliver up the goods or chattels so pawned and continuing redeemable as aforesaid, according to the order of such justice or justices as aforesaid, or make such satisfaction or compensation as such justice or justices shall adjudge reasonable for the value thereof, to the party or parties entitled to the redemption of such goods or chattels so pawned and continued redeemable as aforesaid.

XV. And to prevent inconvenience to persons carrying on the trade and business of a pawnbroker from different persons claiming a property in the same goods or chattels, be it further enacted, That from and after the commencement of this act, any person or persons who shall at any time produce any such note or memorandum as aforesaid, to the person or persons with whom the goods therein specified were pawned or pledged, as the owner thereof, or as authorised by the owner thereof, to redeem the same, and require a delivery of the goods or chattels mentioned therein to him, her, or them, such person or persons shall be, and is and are hereby deemed and taken to be, so far as respects the person or persons having such goods or chattels in pledge, the real owner and owners, proprietor and proprietors of such goods and chattels ; and the person or persons so using



the said trade and business of a pawnbroker shall be, and is and are hereby directed and required, after receiving satisfaction pursuant to the provisions of this act, respecting principal and profit, to deliver such goods and chattels to the person or persons who shall produce the said note or memorandum to him, her, or them, and shall be, and is and are hereby indemnified for so doing, unless he, she, or they shall have had previous notice from the real owner or owners thereof, not to deliver the same to the person or persons producing such note, or unless notice shall have been given to him, her, or them, that the goods and chattels pawned have been, or are suspected to have been, fraudulently or feloniously taken or obtained, and unless the real owner or owners thereof proceeds or proceed, in manner herein-after provided and directed, for the redeeming of goods and chattels pledged, where such note hath been lost, mislaid, destroyed, or fraudulently obtained from the owner or owners thereof.

XVI. And be it further enacted, That in case any pawnbroker shall have had such previous notice as aforesaid, or in case any such note or memorandum as aforesaid shall be lost, mislaid, destroyed, or fraudulently obtained from the owner or owners thereof, and the goods or chattels mentioned therein shall remain unredeemed, that then and in every such case the pawnbroker or pawnbrokers with whom the said goods and chattels were so pledged, shall, at the request and application of any person or persons who shall represent himself, herself, or themselves to the pawnbrokers as the owner or owners of the goods and chattels in pledge as aforesaid, deliver to such person or persons so requesting and applying for the same, a copy of the note or memorandum so lost, mislaid, destroyed or fraudulently obtained as aforesaid, with the form of an affidavit of the particular circumstances attending the case, printed or written, or in part printed, and in part written, on the said copy, as the same

shall be stated to him or her by the party applying as aforesaid; for which copy of such note or memorandum, and form of affidavit, in case the money lent shall not exceed the sum of five shillings, the pawnbroker shall receive the sum of one halfpenny; and in case the money lent shall exceed the sum of five shillings, and not exceed the sum of ten shillings, the pawnbroker shall receive the sum of one penny; and in case the money lent shall exceed the sum of ten shillings, the pawnbroker shall receive the like sum of money as he is entitled to receive and take on giving the original note or memorandum, such money to be paid by the party applying for the same at the time of making the said application; and the person or persons having so obtained such copy of the note or memorandum, and form of affidavit as aforesaid, shall thereupon prove his, or her, or their property in or right to such goods and chattels to the satisfaction of some justice of the peace for the county, riding, division, city, town, liberty or place, where the said goods or chattels shall have been pledged, pawned, or exchanged, and shall also verify on oath, or affirmation, as the case may be, before the said justice, the truth of the particular circumstances attending the case mentioned in such affidavit or affirmation to be made as aforesaid, the caption of such oath or affirmation to be authenticated by the handwriting thereto of the justice before whom the same shall be made, and who shall, and is hereby required so to authenticate the same, whereupon the pawnbroker shall suffer the person or persons proving such property to the satisfaction of such justice as aforesaid, and making such affidavit or affirmation as aforesaid, on leaving such copy of the note or memorandum, and the said affidavit or affirmation with the said pawnbroker, to redeem such goods or chattels.

XVII. And be it further enacted, That all goods and chattels which shall be pawned or pledged shall be deemed forfeited, and may be sold at the expiration of one whole

year, exclusive of the day whereon the goods or chattels were so pawned as aforesaid ; and that all goods and chattels so forfeited on which any sum above ten shillings, and not exceeding ten pounds, shall have been lent, shall be sold by public auction, and not otherwise, by the order of the person having the same in pawn, at and after the expiration of the said year ; but the person employed to sell such goods and chattels by auction shall, and he is hereby required, to cause the same to be exposed to public view, and catalogues thereof to be published, containing the name and place of abode of the pawnbroker, and also the month such goods were received in pawn ; and the number of every such pledge as entered in the book or books kept for that purpose at the time the same were pawned, and an advertisement giving notice of such sale, and containing the name or names and place of abode of the pawnbroker or pawnbrokers with whom the said goods or chattels were in pledge, and also the month such goods were received in pawn, to be inserted two several days in some public newspaper, two days at least before the first day of sale ; and the goods and chattels pledged with every pawnbroker shall be inserted in every catalogue separate and apart from each other, upon pain of forfeiting to the owner or owners of the said goods or chattels, for every offence in the premises, any sum not exceeding ten pounds, nor less than forty shillings.

XVIII. Provided always, and be it further enacted, That all pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, which shall be sold by public auction as aforesaid, shall be sold by themselves, and without other goods being sold at such sale, four times only in every year, (that is to say,) on the first Monday in the months of January, April, July, and October, in every year, and on the following day and days if the sale shall exceed one day, and at no other time ; and the person

who shall be employed to sell the same by auction shall, and he is hereby required to cause the same to be exposed to public view, and catalogues thereof to be published, and an advertisement, giving notice of such sale, and containing the name or names of the pawnbroker or pawnbrokers with whom the said goods were in pledge, to be inserted two several days in some public newspaper, three days at the least before the first day of sale, upon pain of forfeiting to the owner or owners of the said goods for every offence in the premises, any sum not exceeding five pounds nor less than forty shillings.

XIX. Provided always, and be it further enacted, That in case any person or persons entitled to redeem goods or chattels in pledge, shall, before or upon the expiration of the said one year from the time of pawning the same, give notice in writing, or in the presence of one witness, to the person or persons having the same in pledge, or leave the same at his, her, or their usual place of abode, not to sell the same at the end of the said one year, then, and in every such case, such goods or chattels shall not be sold or disposed of by the person or persons having the same in pledge until after the expiration of three calendar months, to be computed from the expiration of the said year, during which said term of three calendar months, the owner or owners of the said goods and chattels shall have liberty to redeem the same upon the terms stipulated and provided by this act.

XX. And be it further enacted, That all and every person or persons with whom any goods or chattels shall have been pawned or pledged, shall, from time to time, in a book or books to be kept by him, her, or them, for that purpose, a true and just account of the sale of all goods and chattels pawned with him, her, or them, for upwards of ten shillings, which shall be sold as aforesaid, expressing the day of the month when such goods were pledged, and the name of the person pledging the same, according to the entry made at the

time of receiving the same in pawn ; and also the day when, and the money for which such goods or chattels shall be sold for more than the principal money and profit aforesaid due thereon at the time of such sale, the overplus shall, by every such pawnbroker, be paid, on demand, to the person by whom or on whose account such goods or chattels were so pawned or pledged, his, her, or their executors, administrators, or assigns, shall, for his, her, or their satisfaction in this matter, be permitted to inspect the entry to be made as aforesaid of every such sale, paying for such inspection the sum of one penny and no more ; and in case any person or persons shall refuse to permit any such person or persons who pawned or pledged such goods or chattels, or who is or are entitled to such overplus money, to inspect such entry as aforesaid, in any such book or books, (such person or persons, if an executor or executors, administrator or administrators, or assignee or assignees, at such time producing his, her, or their letters testamentary, letters of administration or assignment,) or in case the goods or chattels were sold for more than the sum entered in any such book or books, or if such person or persons shall not make such entry as aforesaid, or shall not have *bona fide*, according to the directions of this act, sold the same, or shall refuse to pay such overplus, upon demand, to the pawner or pawners, owner or owners, his, her, or their executors, administrators or assignees,) he, she, or they producing such their letters testamentary, letters of administration or assignment,) every such person or persons so offending shall, for every such offence, forfeit the sum of ten pounds, and treble the sum such goods and chattels shall originally have been pawned for, to the person or persons by whom or on whose account such goods or chattels were pawned, his, her, or their executors, administrators or assignees, to be levied by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of

any two justices of the peace for the county, riding, division, &c. where the offences shall be committed.

XXI. And be it further enacted, That from and after the commencement of this act, no person or persons having any goods or chattels in pledge shall, under any pretence whatsoever, either by himself or herself, or by any other person for him or her, purchase any such goods or chattels so being in pledge with him or her, during the time the same shall remain in his or her custody as such pledge, save and except at such public auction as aforesaid, nor shall suffer the same to be redeemed with a view or intention to purchase the same; nor shall any such person taking, or having any goods or chattels in pledge, make, or cause to be made any contract or agreement with any person or persons offering to pledge, or pledging the same with the owner or owners of the pledge, for the purchase, sale, or disposition of the said goods and chattels before the expiration of one whole year from the time of pawning or pledging the same; nor shall any pawnbroker purchase or receive, or take any goods or chattels in pledge, of or from any person or persons who shall appear to be under the age of twelve years, or to be intoxicated with liquor; or purchase or take in pawn, pledge, or exchange, the note or memorandum aforesaid of any other pawnbroker, nor buy any goods or chattels in the course of his, her, or their trade or business, before the hour of eight of the clock in the forenoon, or after the hour of seven of the clock in the evening throughout the year; nor employ any servant or apprentice, or any other person under the age of sixteen years, to take in any pledge or pledges; nor receive or take in any goods or chattels by way of pawn, pledge, or in exchange, before eight of the clock in the forenoon, or after eight of the clock in the evening, between Michaelmas day and Lady day following, or before seven of the clock in the forenoon, or after nine of the evenings during the remainder of the year, excepting only until

eleven of the clock on the evenings of Saturday throughout the whole year, and the evening preceding good Friday and Christmas day, and every fast or thanksgiving day, to be appointed as aforesaid.

XXII. And be it further enacted, That upon and from, and after the commencement of this act, all and every person and persons who shall follow and carry on the trade and business of a pawnbroker, shall be painted or printed, in large legible characters, the rate of profit allowed by this act to be taken by him, her, or them, and also the various prices of the notes or memorandums to be given by him, her, or them, according to the rates aforesaid, and an account of what notes or memorandums are to be delivered gratis, and of the expense of obtaining a second note or memorandum where the former one has been lost, mislaid, destroyed, or fraudulently obtained, and place the same in a conspicuous part or parts of the shop, or other place wherein he, she, or they shall carry on such trade or business, so as to be visible to, and legible by the persons pledging goods and chattels, standing in the several boxes or places provided for such persons coming to pawn or redeem goods and chattels at such shop.

XXIII. And for the better manifesting by whom the trade or business of a pawnbroker shall thereafter be carried on, be it further enacted, That from and after the commencement of this act, all and every person or persons who shall follow or carry on the trade or business of a pawnbroker, shall cause to be printed or written, in large legible characters over the door of such shop or other place by him, her, or them respectively made use of for carrying on that trade or business, the christian and surname or names of the person or persons so carrying on the said trade or business, and the word pawnbroker or pawnbrokers, as the case may be, following the same, upon pain of forfeiting the sum of ten pounds for every shop or place which shall be so made use

of for the space of one week without having such name or names, and the said word, so printed or written as aforesaid, to be recovered by distress and sale of the offender's goods and chattels, by warrant under the hands and seals of any two justices of the peace acting within the respective county, riding, division, &c. which warrant such justices are hereby authorised and required to grant, upon the confession of the party or parties, or upon the information of any credible witness or witnesses upon oath or affirmation, as the case may be ; and in case sufficient distress shall not be found, or such penalty shall not be forthwith paid, it shall be lawful for such justices, and they are hereby required, by warrant under their hands and seals, to cause the offender or offenders to be committed to the county gaol or house of correction, there to remain without bail or mainprize, for any time not exceeding three calendar months, nor less than fourteen days, unless the said penalty and all reasonable charges shall be sooner paid and satisfied.

XXIV. And be it further enacted, That if in the course of any proceedings before any justice or justices of the peace, in pursuance of or under this act, it shall appear, or be proved to the satisfaction of the justice or justices upon oath or solemn affirmation, that any of the goods and chattels pawned as aforesaid have been sold before the time allowed by this act, or otherwise than according to the directions of this act, or have been embezzled or lost, or are become or have been rendered of less value than the same were at the time of pawning or pledging thereof, by or through the default, neglect, or wilful misbehaviour of the person or persons with whom the same were so pledged or pawned, his, her, or their executors, administrators or assigns, agents or servants, then and in any such case it shall be lawful for every such justice or justices, and he and they is and are hereby required, to allow and award a reasonable satisfaction to the owner or owners of such goods or chattels in respect thereof, or of

such damage, and the sum or sums of money so allowed or awarded, in case the same shall not amount to the principal and profit aforesaid, which shall appear to be due to any person or persons with whom the same were so pledged or pawned, his, her, or their executors, administrators, or assigns, shall be deducted out of the said principal and profit; and in all cases where the goods and chattels pawned as aforesaid shall have been damaged as aforesaid, it shall be sufficient for the pawner or pawns, his, her, or their executors, administrators, or assigns, to pay or tender the money due upon the balance, after deducting out of the principal and profit as aforesaid, for the goods and chattels pawned, such reasonable satisfaction in respect to such damage as any such justice or justices shall order or award; and upon so doing, the justice or justices shall proceed as if the pawner or pawns, his, her, or their executors, administrators, or assigns, had paid or tendered the whole money due for the principal and profit aforesaid; and if the satisfaction to be allowed and awarded to the owner or owners of such goods or chattels shall be equal to or exceed the principal and profit aforesaid, then and in such case the person or persons to whom the same were so pledged or pawned, his, her, or their executors, administrators, or assigns, shall deliver the goods and chattels so pledged to the owner or owners thereof, without being paid any thing for principal or profit in respect thereof, and shall also pay such excess, if any, to the person or persons entitled thereto, under the penalty of ten pounds to be recovered and applied in manner herein after mentioned.

XXV. And be it further enacted, That it shall be lawful for any justice of the peace, upon complaint made to him on the oath or affirmation of one or more credible witness or witnesses, wherein any information shall be laid against any pawnbroker for having offended against this act, or respecting any dispute between any pawnbroker and person having

pawned goods, or the owner or owners of goods pawned, or respecting any felony or other matter, or on any other occasion whatsoever, which, in the judgment of any justice or justices, shall make the production of any book, note, voucher, memorandum, duplicate, or other paper necessary, which shall or ought to be in the hands, custody, or power of any pawnbroker, to summon such pawnbroker before him to attend, with all and every or any book, note, voucher, memorandum, duplicate or paper, which he or she is hereby required to produce before such justice or justices, in the state the same was or were made at the time the pawn or pledge was received, without any alteration, erasement, or obliteration whatsoever; and in case such pawnbroker shall neglect or refuse to attend, or to produce the same in its true and perfect state, such pawnbroker shall, in case he or she doth not shew good cause for such neglect or refusal, to the satisfaction of such justice or justices, forfeit any sum not exceeding ten pounds, nor less than five pounds, to be levied and applied in the manner herein after mentioned.

XXVI. And be it further enacted, That in case any pawnbroker shall, from and after the commencement of this act, in anywise offend against this act, every such pawnbroker shall, for every such offence in neglecting to make, or cause to be made, in a fair and regular manner, in such book or books as aforesaid, any such entry as is required to be made by him, her or them by this act, forfeit such sum of money to the justice or justices before and by whom any information thereon shall be heard and determined in his or their discretion shall seem reasonable and fit, not exceeding the sum of ten pounds; and for every other offence against this act, where no forfeiture or penalty is provided or imposed on any particular or special offence against any part of this act, not less than forty shillings, nor more than ten pounds; and that all forfeitures incurred by any offence committed against this act shall and may be levied by dis-

treasure and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal, or hands and seals of any justice or justices of the peace for the county, riding, division, &c. where the offence shall be committed; and the justices shall award one moiety of the said penalties to the parties complaining, and the remainder of the aforesaid penalty or penalties, not otherwise disposed of and applied by this act, is to be paid and applied to and for the use of the poor of the parish or place where the offence shall have been committed, and shall be paid to the overseers of the poor of such parish or place for that purpose.

XXVII. Provided always, That no person using the trade of a pawnbroker shall be liable to any prosecution before any justice of the peace, by virtue of this act, for any offence against this act, unless information shall be given of such offence within twelve calendar months after the offence committed; and that all and every such information shall be prosecuted before such justices of the peace, as shall act as such justices, near to the place where such offence shall have been committed, unless the same shall have been committed within the city or liberties of London.

XXVIII. And be it further enacted, That the church wardens and overseers of the poor of any parish or place where any offence shall be supposed to have been committed by any pawnbroker against this act, or one of such officers at direction of any justices of the peace, on having notice from such justice of such offence being supposed to have been committed, shall, some or one of them to be nominated by such justice, are and is hereby required to prosecute every offender for every offence suggested by such justice to have been committed against this act, at the expense of the parish whereof they or he is for the time such officer.

XXIX. No person who has been convicted of any fraud, obtaining money under false pretences, or of any felony, to be allowed to prosecute for any offence under this act.

XXXI. The clauses of this act to extend to the executors, administrators and assigns of every deceased pawnbroker, save and except that such executor or administrator shall not be liable for any forfeiture personally or out of his own money, unless incurred by his own fault or neglect.

XXXIII. Provided always, and be it enacted, That in all actions, suits, informations, trials and other proceedings in pursuance of this act, any inhabitant of the parish, town or place in which any offence shall be committed contrary to the meaning and intent of this act, shall be admitted to give evidence and deemed a competent witness,

remembered, That on this day of in the
 year of his Majesty's reign, A. B. is convicted
before of his Majesty's justices of
the peace for the said county of (or for the
 riding or division of the said county of
or for the city, liberty, or town of as the case
shall happen to be,) for and the said
do adjudge him (or her) to pay and forfeit for the same the
sum of Given under the day
and year aforesaid.

And the said justice or justices, before whom such conviction shall be had, shall cause the same, so drawn up in the form

or to the effect aforesaid, to be fairly written upon parchment, and transmitted to the next general, or general quarter sessions of the peace, to be held for the county, riding, division, &c. wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter session; and in case any person or persons so convicted shall appeal from the judgment of the said justice or justices to the said general or quarter session, the justices in such general and quarter session are hereby required, upon receiving the said conviction drawn up in the form or to the effect foresaid, to proceed to the hearing and determination of the matter of the said appeal at such next session and not afterwards, according to the direction of this act, any law, custom, or usage to the contrary notwithstanding; and no certiorari shall be granted to remove any conviction or other proceeding had thereon in pursuance of this act.

XXXV. Provided always, and be it further enacted, That if any person convicted of any offence or offences punishable by this act, shall think himself or herself aggrieved by the judgment of the justice or justices, before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter session of the peace which shall be held for the county, riding, division, city, liberty, town or place where such judgment shall have been given, and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in their said next general or quarter session, and to pay such costs as the said justices in such session shall award on such occasion; which recognizance the said justice or justices before whom such conviction shall be had, is and are

hereby empowered and required to take ; and the justices in the said general or quarter session are hereby authorised and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party ; and if, upon the hearing of the said appeal, the judgment of the justice or justices, before whom the appellant shall have been convicted, shall be affirmed, such appellant shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the said justices in the said general or quarter session shall award to be paid for defraying the expenses sustained by the defendant or defendants in such appeal ; or in default of making such payment, shall suffer the respective pains and penalties by this act inflicted upon persons respectively who shall neglect to pay, or shall not pay the respective sums and forfeitures by this act to be paid by or imposed upon persons respectively who shall be convicted by virtue of this act.

XXXVI. This act shall be deemed a public act; and be judicially taken notice of as such by all judges, justices, and others whomsoever, without the same being specially pleaded.

Tait's Justice of Peace, p. 356.—Hutcheson's Justice of Peace.

Ross v. Equitable Loan Company of Scotland, 23. Dec. 1826, S. & D. V. 192.

PLANTING AND INCLOSING.

To encourage planting, and to prevent or punish any attempt to destroy trees, the justices of the peace have been specially entrusted with the execution of various

statutes. Many of these are now obsolete, viz. acts 1457, *cap.* 80,—1457, *cap.* 83,—1508, *cap.* 74, and 1535, *cap.* 10. By the statute 1579, *cap.* 84, the preceding acts are ratified ; and it is further declared, that whoever breaks into yards or orchards is liable, in all cases, for the damage ; and for the first offence in L.10 Scots ; for the second in L.20 Scots ; for every subsequent offence in L.40 Scots ; all to be paid to the owner.

The statutes still in force are as follow. The act 1661, *cap.* 41, “ for planting and inclosing of ground,” ordains,

That every heritor, liferenter, and wodsetter, (according to the qualifications under-written,) within his said ancient kingdom of Scotland, with one thousand pounds of yearly valued rent, shall inclose four aikers of land yearly at least, and plant the same about with trees of oak, elme, ash, plain, sauch or other timber, at three yards distance. And that all other heritors of greater or lesse rent nor the said sum of one thousand pounds money foresaid, do plant, inclose and ditch yearly, moe or fewer aikers, according to their respective rents, for the space of ten years next ensuing ; and that of such lands as the heritors shall think most fit for planting and capable for inclosing, to be also planted, ditched or inclosed in manner foresaid ; and that the saids heritors begin to plant, ditch, and inclose, the said ground at the feast of Michaelmesse next to come, and uphold the same in time comming. And for the further incouragement of the saids heritors, wodsetters and liferenters, to go about the ready observance of the said act, liberty and power is granted to them, at the sight of the sheriffs, stewarts, lords of regalities, barrons, and justices of peace in their respective bounds, to cast about the high-wayes to their convenience, providing they do not remove them above two hundred ells upon the whole ground ; excepting alwayes herefrom,

barrough and incorporatè aikers, which are no wayes to be parked or inclosed, unlesse the heritors thereof shall think it meet and expedient. And where there are liferenters upon lands, it is hereby declared, that the same shall be done upon the equal charges and expenses of the liferenter and heritor. And in case of proper wodsets, it is also hereby specially declared, that the same shall be done by the wodsetter, and the charges thereof is and shall be added to the reversion, and no wayes redeemable, while they make paiment thereof, as well as of the sums for which the lands are wodset. And for the better incouragement of heritors, and for preserving of the said planting and inclosures, it is statute and ordained, that whosoever shall cut or break any of the saids trees, (not being the heritors themselves) shall pay unto the heritors or persons wronged, twenty pounds for every tree; or if he be not able to pay the said twenty pounds, it shall be in the power of the party thereby wronged to make him work six weeks, giving him meat and drink allanerly. And further it is ordained, that whosoever shall break down the hedges or dikes of the said parks or inclosures, or be found within the same, being a stranger, shall be holden and repute a breaker down thereof, and pay five pounds for every fault; or if he be not able to pay the said five pounds, to work ten dayes to the owner of the saids grounds, for meat and drink as said is. And for the greater encouragement of all persons, who shall be vertuously enclined to ditch, inclose or plant their ground, in manner foresaid, his Majesty, with consent above specified, hath declared, and by thir presents declares such parts and portions of their said ground, as shall be so inclosed, and planted, to be free of all manner of land-stents, taxations, or impositions, of whatsoever nature, or quarterings of horse in the saids inclosures, for the space of nineteen years next after the date hereof; and that at the proportioning of the saids burthens, the same inclosures shall be exempted and made free thereof ac-

cordingly. And also for the better preserving of the saids inclosures, and of the trees and planting to be set about the same, it is statute and ordained, that ilk heritor, tenant and cottar, keep their cattel and goods out of their neighbours inclosures at all times, that their trees, planting and ditching, be no wayes damnified or prejudged, under the penalty of five pounds for ilk contravention, *toties quoties*, to be paid to the party damnified. And further statutes and ordains, That where inclosures fall to be upon the border of any person's inheritance, the next adjacent heritor shall be at equal pains and charges in building, ditching and planting that dike which parteth their inheritance. And recommends to all lords, sheriffs and baylies of regalities, stewarts or stewartries, and justices of peace, baylies of burroughs, and other judges whatsoever, to see this act put in execution, and to grant processe at the instance of the parties damnified and prejudged, and to see them repaired, after the form and tenor of this act above-written, in all points.

The act 1669, *cap.* 17, declares,

That whensoever any person intends to inclose by a dike or ditch upon the march betwixt his lands and the lands belonging to other heretors contiguous thereunto, it shall be leisom to him to require the next sheriffs or bailiffs of regalities, stewarts of stewartries, justices of peace or other judges ordinar, to visit the marches alongst which the said dike or ditch is to be drawn, who are hereby authorised, when the said marches are uneven or otherwayes uncapable of ditch or dike, to adjudge such parts of the one or the other heretor's ground, as occasion the inconveniency betwixt them, from the one heretor in favours of the other, so as may be least to the prejudice of either party; and the dike or ditch to be made, to be in all time thereafter the common march betwixt them; and the parties so adjudged *respective* from the one to the other, being estimat to the just

avail and compensated *pro tanto*, to decern what remains uncompensated of the price, to the party to whom the same is wanting: And it is hereby declared, that the parts thus adjudged *hinc inde*, shall remain and abide with the lands or tennandries to which they are *respective* adjudged, as parts and pendicles thereof in all time coming.

The act 1685, *cap.* 39, ratifies and renews the act 1661, *cap.* 41, above quoted, and declares,

That hereafter no person shall cut, break, or pull up any tree, or peel the bark of any tree, under the pain of ten pounds Scots for each tree within ten years old, and twenty pounds Scots for each tree that is above the said age of ten years, and that the havers or users of the timber of any tree that shall be so cut, broken, or pulled up, shall be liable to the same penalty, except he can produce the person from whom he got it; and if the person that shall be so convicted be not able to pay the fine, then he shall be decerned to work a day for each half merk contained in the said fine to the heritor whose planting shall be so cut or broken: As likewise, statutes and ordains, That no person shall break down or fill up any ditch, hedge, or dyke, whereby ground is inclosed, and shall not leap, or suffer their horse, nolt, or sheep, to go over any ditch, hedge, or dyke, under the pain of ten pounds Scots, *toties quoties*, the half whereof to be applied to the heritor, and the other half for the mending and repairing of bridges and highways within the paroch, at the sight of the sheriff, stewart, or justices of peace, before whom the contraveeners shall be pursued.

The statute 1686, *cap.* 11, is in the following terms:

Our Sovereign Lord, considering the prejudice and damage, which the lieges do sustain in their planting and enclosures, through the not herding of nolt, sheep, and other bestial, in the winter time, whereby the young trees and hed-

ges are eaten and destroyed, doth, with advice and consent of his Estates of Parliament, statute and ordain, That all heritors, liferenters, tenants, cottars, and other possessors of lands or houses, shall cause herd their horses, nolt, sheep, swine and goats the whole year, as well in winter as summer, and in the night time shall cause keep the same in houses, folds, or enclosures, so as they may not eat or destroy their neighbour's ground, woods, hedges, or planting; certifying such as shall contraveen, they shall be liable to pay half a merk *toties quoties*, for ilk beast they shall have going on their neighbour's ground, by and attour the damage done to the grass or planting; and declares, That it shall be lawful to the heritor, or possessor of the ground, to detain the said beasts, until he be payed of the said half merk for ilk beast found upon his ground, and of his expenses in keeping the same; and this but prejudice of any former acts of Parliament made against destroyers of planting and inclosures.

The statute 1695, *cap.* 23, has been quoted in the title "*Commonly.*"

The statute 1698, *cap.* 16, "for preserving of planting," is as follows :

Our Sovereign Lord, with advice and consent of the Estates of Parliament, ratifies and approves all former laws and acts of Parliament, made for planting and enclosing of ground; and for making the samen more effectual, statutes and ordains, That all tenants and cottars shall preserve and secure all growing wood and planting that is upon the ground they possess, that none of it shall be cut, broke, or pulled up by the roots, or the bark pieled off any tree, and that under the pain, to be exacted by their masters allenary, of ten pounds Scots for each tree within ten years old, and twenty pounds Scots for each tree that is above the said age of ten years, unless the samen be done by warrant and order of the said master and heritor of the ground, and ordains the te-

nant to be liable for his wife, children, and servants, or any others within his family that shall contravene this present act.

There are several British statutes on this subject ; only the two which follow seem applicable to Scotland.

The statute 1. of Geo. I. *cap.* 48, declares,

That if any person or persons whatsoever, from and after the 24th day of June, in the year of our Lord 1716, shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface, or spoil any timber tree or trees, fruit tree or trees, or any other tree or trees, the person or persons, body politick or corporate, that is, are, shall, or may be damaged by the same, shall receive such satisfaction and recompence of and from the inhabitants of the parish, town, hamlet, vill, or place, where such tree or trees shall be so maliciously broken down, cut up, pluckt up, thrown down, barked, destroyed, defaced, or spoiled, and to be viewed, and damages and costs to be recoverable and recovered against such parish, town, hamlet, vill, or place, by the person or persons whose tree or trees shall be so maliciously broke down, cut up, pluckt up, thrown down barked, destroyed, defaced, or spoiled, in the same manner and form as hedges and dikes overthrown by persons in the night, in and by an act of Parliament made in the 13th year of the reign of King Edward the First, intituled, Lords may approve against their neighbours: usurpations of commons during the estate of particular tenants, are to be levied, and damages yielded ; and where such offence or offences shall be committed in that part of Great Britain called Scotland, to be recoverable and recovered by way of summar action, and in the same manner and form as damages in other cases of riot are to be recovered by the laws there, unless the party or parties so offending shall, by such parish, town, hamlet, vill, or place, be convicted of such offence, within

the space of six months from the committing such offence or offences; any law, or construction to the contrary in any wise notwithstanding. And be it further enacted and declared, by the authority aforesaid, That it shall and may be lawful to and for any two or more justices of the peace of the county, riding, division, stewardry, regality, city, town, borough or corporation, wherein any such offence or offences shall be committed, or the justices in open sessions, upon complaint to them made by any inhabitant of the aforesaid parish, hamlet, vill, or place, or of the owner of such tree or trees, or of any other, to cause such offender or offenders to be apprehended for the trespasses and offences aforesaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforesaid; and if such justices shall convict any person or persons of all or any the trespasses or offences aforesaid, then such justices, immediately after such conviction, shall commit such offender and offenders to the house of correction, there to continue and to be kept to hard labour for the space of three months, without bail or mainprise; and where there are no houses of correction, in any county, riding, division, stewardry, regality, city, town, or borough, where such offender or offenders shall be convicted, the said justices shall commit such offender or offenders to such prison as is appointed for other criminals, there to continue for the space of four months; and shall also order and adjudge that such offender and offenders shall be publickly whipt by the master of such house of correction once every month, during such three months, in such borough or corporation, if the offence be committed therein, and not otherwise, or in the market-town where such house of correction stands, or in the next market-town next adjacent to such house of correction, and in the county where such offence shall be committed, on the market-day of such town, between the hours of eleven and two of the clock; and in such places where there is no house of

correction, the said justices shall order and adjudge that such offender or offenders shall be publicly whipt by the hand of the common hangman or executioner once every month, during such four months, on the market-day of any borough or corporation where such offender shall be committed, or on the market-day of some town, between the hours of eleven and two of the clock.

And it is hereby further enacted, That before any such offender or offenders shall be discharged, he, she, and they shall find sufficient sureties for his, her, or their good behaviour, for the space of two years thence next ensuing, any law, custom, or construction to the contrary notwithstanding.

And whereas divers woods, underwoods, and coppices have been heretofore, and lately set on fire, or burnt, to the great discouragement of planting; be it therefore enacted and declared by the authority aforesaid, That if any person or persons shall, from and after the said twenty-fourth day of June 1716, maliciously set on fire, or burn, or cause to be burnt, any wood, underwood, or coppice, or any part thereof, such malicious setting on fire, burning, or causing to be burnt, shall be, and is hereby declared and made felony, and the offender and offenders shall suffer, and be liable to all the penalties and forfeitures, as other felons by the law now are: and where such offences are committed in that part of Great Britain called Scotland, such offender and offenders shall suffer and be liable as wilful fire-raisers, according to an act passed in the seventh year of her late Majesty Queen Anne, intituled, An act for improving the union of the two kingdoms; any thing in this act contained, or in any other law or statute to the contrary in anywise notwithstanding.

And the statute 6. of Geo. III. *cap.* 36, “for encouraging the cultivation, and for the better preservation of trees, roots, plants and shrubs,” on the preamble, that many evil-disposed persons were in the prac-

tice of entering young plantations, and nursery grounds, and of carrying off, or destroying on the spot, the young plants and shrubs, declares,

That all and every person and persons who shall, in the night-time, lop, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy, or carry away any oak, beech, ash, elm, fir, chesnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, without the consent of the owner or owners thereof first had and obtained; or shall, in the night-time, pluck up, dig up, break, spoil, or destroy, or carry away any root, shrub, or plant, roots, shrubs, or plants, of the value of five shillings, and which shall be growing, standing, or being, in the garden-ground, nursery-ground, or other inclosed ground, of any person or persons whomsoever, shall be deemed and construed to be guilty of felony; and every such person or persons shall be subject and liable to the like pains and penalties as in cases of felony; and the court, by and before whom such person or persons shall be tried, shall, and hereby have authority to transport such person or persons, for the space of seven years, to any of his Majesty's plantations in America, in like manner as other felons are directed to be transported by the laws and statutes of this realm: And all and every person and persons who shall be wilfully aiding, abetting, or assisting in such cutting down, breaking, throwing down, barking, burning, or otherwise spoiling or destroying, or carrying away, any such oak, beech, ash, elm, fir, chesnut, or asp, timber tree, or other tree or trees standing for timber, or likely to become timber, as aforesaid; or in such plucking up, digging up, cutting, breaking, spoiling, or destroying, or carrying away such root, shrub, or plant, roots, shrubs, or plants, as aforesaid, of the value aforesaid; or who shall buy or receive such root, shrub, or plant, roots, shrubs, or plants, of the value aforesaid, know-

ing the same to be stolen, shall be subject and liable to the same punishment as if he, she, or they, had stolen the same; any law to the contrary in anywise notwithstanding.

Erskine, IV. 4. 39.—Tait's Justice of Peace, p. 349.
—Hutcheson's Justice of Peace, II. 498.—Bankton, IV. 41. 8.

DECISIONS.

Penman, 3. July 1739, Elchies, No. 3. *voce* "*Planting*," and Morr. p. 10481.—Earl of Peterborough, 15. June 1784, *ib.* 10497.—Earl of Cassillis, 28. Feb. 1809, F. C. Ord, 23. Feb. 1738, Elchies' Notes, p. 3. Morr. 10479.—Earl of Crawford, 21. July 1669, *ib.* 10475.—Chalmers, 29. July 1756, *ib.* 10485.—Riddell *v.* Marquis of Tweeddale, 5. Dec. 1769.—Seaton, 9. Jan. 1679, Stair.—Lockhart *v.* Sievwright, 20. Jan. 1758.—Ramsay *v.* Primrose, 10. Jan. 1702.—Grey *v.* Blairs, 17. Jan. 1782.—Hall *v.* Callender, 7. Dec. 1744.—Murison *v.* Drysdale, 14. July 1780.—Douglas and Forrest *v.* Inglis, &c. 21. Jan. 1777, Mor. App. No. 2. *voce* "*Runridge*."—Russell, &c. *v.* York-Buildings Co. 28. Jan. 1774.—Taylor *v.* Earl of Callendar and Shaw, 7. Dec. 1698.—Gray *v.* Wardrop, 14. Jan. 1777, Mor. App. No. 1. *voce* "*Runridge*."—Bruce, 15. May 1792.—Dunbar *v.* Gordon, 28. July 1713, Forbes.—Govan *v.* Lang, 18. Feb. 1794.—Loch *v.* Tweedie, 3. July 1799.—Shaw and M'Kenzie *v.* Ewart, 2. March 1809.—Turnbull *v.* Coutts, 23. Feb. 1809.—Buchanan *v.* Malcolm, 3. March 1784.—Robertson, 24. July 1743.—Cooper *v.* Campbell, 18. Jan. 1805.—Ferguson *v.* Macnigger, 24. July 1734.—Nasmyth *v.* Inhabitants of the Water of Leith, 17. Nov. 1719, Dict. II. 87.

POOR.

Under the denomination of poor are comprehended those who are really dependent on charity, in consequence of age or infirmity, and those who come under the description of vagrants, or idle and disorderly characters. There are a great many statutes applicable to both classes. With regard to the latter, however, it may now be said, that they are entirely obsolete. The frequency of the crime of sorning or masterful begging, at the date of the enactments passed for its suppression, called for a rigour that is no longer necessary. The dates of these acts against sorners are as follow : —1424, *cap.* 7, 25, & 42,—1425, *cap.* 66,—1427, *cap.* 103,—1449, *cap.* 22,—1455, *cap.* 45,—1457, *cap.* 79,—1477, *cap.* 77,—1503, *cap.* 70,—1535, *cap.* 22,—1584, *cap.* 16,—1597, *cap.* 268,—1609, *cap.* 13,—1661, *cap.* 42,—1663, *cap.* 16,—and part of the act 1672, *cap.* 18.

The legal provision for the poor in Scotland is fixed by the following statutes.

The act 1579, *cap.* 74, respects the “ punishment of strang and idle beggars, and relief of the pure and “ impotent.” The first branch of it having gone into desuetude, it will not be necessary to quote it ; but the second branch is in these terms :

It is therefore thocht expedient, statute and ordained, that the Lorde Chancellor, according to the direction of sindrie

lovabill actes of Parliament heirtofoir maid, sall call for the erectiones of all hospitaies, to be produced befoir him, and inquire and considder the present estaite thereof, reducing them, sa far as is possible, to the first institution, as may best serve for the helpe and reliefe of the saidis aged, impotent, and pure peopill: And als that the provests and baillies of ilk burgh and towne, and the justice constitute be the King's commission in every parochin to landwart, sall, betuixt and the first said day of Januar nixt-to-cum, take inquisition of all aged pure, impotent and decayed persones, borne within that parochin, or quhilkes war dwelling, and had their maist commoun resorte in the saide parochin the last seven zeires by-past, quhilkes of necessitie mon live bee almes: and up-on the said inquisition, sall make ane register buike, containing their names, and sur-names, to remaine with the provests and baillies within burgh, and with the justice in everie parochin to land-wart: And to the effect, that the number of the pure people of everie parochin may be knawin, statutis and ordainis, that all pure peopill, within fourtie dayes after the proclamation of this present act, at the mercat croce of Edinburgh, repayre to the parochin quhair they were borne, or had their maist commoun resorte or residence the last seven zeires by-past, and there settil themselves, under the paine to bee punished as vagaboundes and contravenars of this present proclamation: And the said space of fourtie dayes being by-past, that then, the provests and baillies within burrowes, and the judge constitute be the Kingis commission in ilk parochin to land-wart, make a catalogue of the names of the saidis pure people, inquire the men and wemen quhair they wer borne, quhiddir they ar maryed or un-maryed, quhen, and be quhom they war maryed, and quhat bairnes they have, and quhair their bairnes wer baptized, and to quhat forme and trade of life they addresse themselves, and their saidis bairnes, gif they be diseased or haill, and abill in bodie, and quhat they get commonly on the daye

be their begging: And sik as necessairlie mon be susteined be almes, to see quhat they may be maid content of their awin consentis, to accept daylie to live unbeggand, and to provide quhair their remaining sall be, be them-selves, or in hous with others, with advice of the parochiners, quhair the saidis pure peopill may be best ludged and abyde: And thereupon, according to the number, to consider quhat their neidfull sustentation will extende to everie oulk; and then, be the gude discretions of the saidis provests, baillies, and judges in the parochinis to land-wart, and sik as they sall call to them to that effect, to taxe and stent the haill inhabitants within the parochin, according to the estimation of their substance, without exception of persones, to sik ouklike charge and contribution as sall be thocht expedient and sufficient to susteine the saidis pure peopill; and the names of the inhabitants stented, togidder with their taxation, to bee likewise registrate: And that at their discretion, they appoynt overseers and collectours in everie burgh, toun and paroche, for the haill zeir, for collecting and receiving of the said ouklike portion, quhilkes sall receive the same, and deliver sa-meikle thereof to the saidis pure peopill, and in sik maner as the saidis provest and baillies within burgh, and judges in the parochin to land-warte, *respectivè*, sall ordaine and command; and that overseeres of the saidis pure peopill be appoynted be their discretions, to continue also for a zeir: And at the end of the zeir, that the taxation and stent roll be alwayes maid of new, for the alteration that may be throw death, or be increas or diminution of mennes guddes and substance: And that the provests and baillies in burrowes or tounes, and the saidis judges in the parochinnes to land-wart, sall give an testimoniall to sik pure folk as they finde not borne in their awin parochin, or making residence therein the last seven zeires, sending or directing them to the nixt parochin, and sa fra parochin to parochin, quhill they be at the place quhair they were borne, or had their

maist commoun resort and residence during the last seven zeires preceeding ; there to be put in certaine abiding places, and susteined upon the commoun almes, and ouklie contribution, as is befoir ordained, except leprous peopill, and bedfast peopill, quhilks may not be transported : Providing that it be leifull to the pure peopill, sa directed, to their awin abiding places, with testimonialles to aske almes in their passage, sa as they passe the direct way, not resting twa nictes togidder in ony an place, without occasion of seekenesse or storme impeede them.

And gif ony of the pure peopill refuse to passe and abide in the places appoynted, or after the appoyntment be found begging, then to be punished be scourging, imprisonment, and burning throw the eare, as vagabounds and strang beggars ; and for the second fault, to be punished as thieves, as is befoir appoynted. And gif the persones chosen collectours refuse the office, or having accepted the same, beis found negligent therein, or refusis to make their compts everie half zeir anis, at the least, to the provests and baillies in burrowes, and to the saidis judges in land-wart, and to deliver the superplus of that quhilk restis in their handes at the end of the zeir, or halfe zeir, to sik as sall be chosen collectours of new ; then ilk-ane of the collectours so offending sall incur the paine of twentie pundis to the use of the pure of that parochin, and imprisonment of their persones during the Kingis will ; for quhilkes paines, the saidis provests, baillies and judges, sall poynd and distrenzie ; and gif ony persones, being abill to further this charitabill woorke, will obstinatlie refuse to contribute to the reliefe of the pure, or discourage uthers from sa charitabill ane deede, the obstinate or wilfull person, being called befoir the saidis provests and baillies within burgh, or judges in the parochins to land-wart, and convict thereof, be ane assise, or sufficient testimonie of twa honest and famous witnesses his nichtbours, upon the supplication of the saidis provests, baillies, and

judges, to the King's Majestie, and his privie counsell, the obstinate and wilfull person or persones sall be commanded to waird in sik pairt as his Hienes and his counsell sall appoynt, and there remaine, quhill he be content with the ordour of his said paroch, and performe the same in deede; and gif the aged and impotent persones, not being sa diseased, lamed, or impotent, bot that they may woork in sum manner of wark, sall be, bee the overseers in ony burgh or parochin, appoynted to wark, and zit refusis the same, then first the refuser to be scourged, and put in the stokkes; and for the second fault, to be punished as vagabounds, as said is. And gif any beggar's bairne, being above the age of five zeires, and within fourteene, male or female, sall be liked of, be ony subject of the realme of honest estait, the said person sall have the bairne, be ordoure and direction of the saidis provest and baillies within burgh, or judge in every parochin to land-wart: Gif he be a man-child to the age of xxiv zeires, and gif sche be a woman child to the age of xvij zeires; and gif they depart, or be taken or intised from their maister or maistresse service, the maister or maistresse to have the like action and remedie, as for their hired servand or prentises, asweill against the bairne, as against the taker and intiser thereof. And quhair collecting of money may not be had, and that it is over great ane burding to the collectours, to gadder victualles, meat, and drink, or uther things for reliefe of the pure in sum parochines, that the provest and baillies in burrowes, and the saidis judges in the parochines to land-wart, be advise of certaine of the maist honest parochiners, give licence under their hand-writs to sik, and sa many of the saidis pure people, or sik uthers of them as they sall think gude to aske and gadder the charitable almes of the parochiners at their awin houses, sa as alwayes it bee speedely appoynted and aggried, how the pure of that parochin sall be sustained within the same, and not to be chargeable to uthers, nor troublesome to strangers.

And seeing, be reason of this present act and ordour, the commoun prisoners, irones and stokkes of everie head burgh of the schire, and uthers townes, are like to be filled with ane greater number of prisoners nor of before hes bene accustomed, in sa far as the saidis vagaboundes, and uthers offendours, ar to be committed to the commoun prison of the schire or towne quhair they were taken, the same prisoners being in sik townes quhair there is great number of pure peopill, mair nor they ar weill abill to susteine and relieve; and sa the prisoners ar lik to perish in default of sustenance; therefor the expenses of the prisoner sall be payed be a pairt of the commoun contributions and oukly almes of the parochin quhair he or sche was apprehended, allowand to ilk person daily ane pounce of ait breade, and water to drink; for payment quhair of the presenter of him to prison sall give sovertie, or make present payment. And that the schireffes, stewardest, and baillies of regalities, and their baillies over all the realme, and their deputes, see this present act put to dew execution in all poyntes within their jurisdictions *respective*, as they will answere to God, and our Sovereine Lord thereupon. And quhatever doubt or ambiguitie sall happen to arise upon this present act, or ony pairt thereof, our Sovereine Lord, with advise of his saidis three Estaites, committis the interpretation, explanation, suppliment, and full execution thereof, to his Majestie, with advise of his privie councill.

The statute 1592, *cap.* 147, directs that the preceding act be rigidly enforced; but specially in regard to the punishment of masterful beggars.

In the statute 1663, *cap.* 16, there is the following clause :

Ordains the heritors of each paroch, or as many of them as shall happen to meet, upon publick intimation, made at

the paroch-kirk upon any Sabbath at the dissolving of the church from the first sermon, by any of the heretors of the paroch, or by the employers of the poor, to make up a stent roll for maintenance of the poor in their paroch, who shall be employed, as said is, at the rate aforesaid, the one half thereof to be payed by the heretors, either conform to the old extent of their lands within the paroch, or conform to the valuation by which they last payed assessment; or other-ways, as the major part of the heretors, so meeting, shall agree, liferenters and wodsetters alwayes being lyable during their rights as heretors; and the other half thereof to be laid upon the tennents and possessors, according to their means and substance. And in case the saids heretors, being required by any person or society, imploying the poor as said is, shall failzie to make up and deliver a stent roll in maner foresaid, with power to the persons, society or others intrusted by them, to charge the heretors of each paroch for the sum of two shillings Scots *per diem*, for each one of their poor, whereof they shall be relieved in maner foresaid, conform to the old extent or valuation foresaid, at the option of the person or society imploying, or these intrusted by them; which stent roll shall continue and stand for one year after the making up thereof, either by the heretors, or in case of failzie, by the persons or societies imploying the poor, as said is, and shall then be renewed from year to year, during the years above written. Providing also, that the heretours, in case they failzie to make a stent roll, as said is, and be charged conform to the old extent or valuation of their lands, that they shall have relief of the tennents and possessors of their lands, for the one half of what they shall be distressed for. And his Majesty, with consent foresaids, ordains letters of horning to be directed hereupon, at the instance of the persons or societies employers of the poor, or persons intrusted by them, against the heretors and others, for payment of the said daily allowance for the poor, or

against the receptors of them, being so employed, for ten shillings Scots money *per diem*, upon fifteen dayes only.

The statute 1672, *cap.* 18, besides containing a variety of regulations respecting vagabonds, orders the ministers of each parish, with some of the elders, to take up an exact list of all the poor persons within their parishes—specifying their age and condition,—if they be able or unable to work by reason of age, infirmity, or disease,—when they were born, and in what parish they have most commonly haunted during the last three years preceding the uptaking of these lists.

A proclamation of council, dated 29th August 1698, appoints all beggars within the kingdom immediately to repair to the several parishes where they were born; and, where the parish or place of birth is not known, that they repair to the parishes where they last resided for the space of seven years together.

The statute 1695, *cap.* 43, ratifies and revives all preceding enactments respecting the poor. And the act 1698, *cap.* 21, is a general ratification of the same nature.

Besides these statutes of the Scottish Parliament, there is a recent act, which must be noticed in this place. It is the statute 6. Geo. IV. *cap.* 27, “for extending “to Scotland certain provisions of an act” (of the 59. Geo. III.) “*for the relief of the poor*, in so far as the “same relate to parochial relief to Chelsea and other “pensioners;” which declares,

That it shall be lawful for the heritors and kirk-session of any parish in Scotland, at the request of any person who shall be entitled to, or in receipt of any pension, superannuation or other allowance, in respect of his service in the

navy, royal marines, army, or ordnance, to advance for his support, or the support of his family, any weekly sum not exceeding the rate of his pension or allowance, to be repaid by, or out of the next quarterly, or other payment of such pension or allowance, and to take an assignment thereof, by way of security for the money so to be advanced, any thing in any act or acts to the contrary notwithstanding; and every assignment to be made of any such pension, superannuation or allowance, for the purposes of this act, shall be exempt from stamp duty, and shall be in the form and to the effect following.

And every such assignment, attested by one of his Majesty's justices of the peace, of any quarterly or other payment payable by the commissioners for the affairs of the royal hospitals at Chelsea or Greenwich, or by the paymaster of the royal marines, or the treasurer of the board of ordnance, respectively, and made as aforesaid to the heritors and kirk-session of any parish, shall be transmitted by such heritors and kirk-session, at least one month before such payment shall become due, under cover, addressed to the paymaster-general of his Majesty's forces, with the words, "Chelsea pensioner," written thereon; or to the paymaster of the pensions at Greenwich hospital, with the words, "Greenwich pensioner," written thereon; or to the paymaster of the royal marines, with the words, "royal marine pensioner," written thereon; or to the secretary of the board of ordnance, with the words, "ordnance pensioner," written thereon, who shall respectively cause the said payment to be made to the heritors and kirk-session of the parish, for whose security the assignment shall have been made, or to the treasurer of the said kirk-session, in the same manner as the payment would have been made to the person assigning the same, if no such assignment had been made; and such heritors and kirk-session, or the treasurer of the said kirk-session, are, and is hereby authorised to receive the same,

and to retain thereout for the use of the parish, so much as shall have been advanced and paid on security thereof, and forthwith to pay the residue, (if any there shall be,) to the pensioner or person by whom such assignment shall have been made; and, if any question shall arise between the pensioner or person making any such assignment, and the heritors and kirk-session of any parish, touching the amount which shall be due and payable to them by virtue of any such assignment, the same shall be determined in a summary way, by one of his Majesty's justices of the peace, and his order and determination therein shall be final and conclusive: provided, that no such assignment shall entitle the heritors and kirk-session to whom the same shall be made, to receive the pension or allowance purporting to be thereby assigned, if the party signing the same shall die before the time when such pension or other allowance would have become payable to him, if no such assignment thereof had been made.

II. And be it further enacted, That when any pensioner or other person entitled to or in receipt of any such pension or other allowance as aforesaid, shall leave his wife or family chargeable, or suffer them to become chargeable to any parish, it shall be lawful for two or more justices, upon complaint thereof to them made and duly verified by any one or more of the heritors or members of kirk-session of such parish, to direct, by order under their hands, that the next payment which shall become due of such pension or other allowance, shall be made to the heritors and kirk-session of the parish, to which such wife or family shall have become chargeable, or to the treasurer of the said kirk-session; and any one or more of such heritors or members of such kirk-session shall transmit such order to the aforesaid commissioners for the affairs of the royal hospital at Chelsea or Greenwich, or the secretary of the board of ordnance respectively, in like manner as any assignment is herein before

directed to be transmitted to the paymaster-general of his Majesty's forces, and the paymasters of pensions at Greenwich, the paymaster of the royal marines, and the secretary of the board of ordnance, as the case may be; which said paymaster-general, or paymaster of pensions at Greenwich, or the treasurer of the board of ordnance, shall thereupon, and upon sufficient proof being given that the person whose pension or other allowance shall be directed to be paid, shall have been living when the same shall become payable, and would have been entitled to receive the same if no such order had been made, cause the said payment to be made to the heritors and kirk-session of the parish for whose security such order shall have been made, or to the treasurer of the said kirk-session; and the heritors and kirk-session receiving any such pension or other allowance, by virtue of any such order, shall retain and apply the same, or so much thereof as shall have actually been expended for the purposes aforesaid, for the use and indemnity of the parish, and shall pay the overplus, (if any there shall be,) to the pensioner or person entitled thereto; and upon receipt of any such order as aforesaid, by which the pension or other allowance to be mentioned therein shall be directed to be paid to such heritors and kirk-sessions as aforesaid, the payment thereof may be suspended, until sufficient proof shall have been given to entitle the heritors and kirk-session of the parish in such order named, to receive the money thereby directed to be paid to them.

Erskine, I. 7, 63.—Dunlop on the Poor Laws.
Tait's Justice of Peace, p. 371.

DECISIONS.

Robert v. Fife, 25. Feb. 1825.—Howie, 25. Jan. 1800, Mor.
App. No. 1, *voce Poor*.—Scott, 13. Nov. 1818, F. C.—
Pollock v. Darling, 17. Jan. 0184, Mor. 10591.—Wilson,

16. Dec. 1824.—Finlayson, 7. July 1809.—Tait, 28. Feb. 1802, Mor. App. No. 3, *voce Aliment.*—Christie, 6. July 1802, *ib.* No. 5.

RESIDENCE.

Pennicuick, 3. March 1813.—Inveresk, 3. March 1757, 10571.—Gladsmuir, 11. June 1806, App. No. 5, *v. Poor.*—Cockburnspath, 9. June 1819.—Runciman, 24. Jan. 1784, 10583.—Rescobie, 28. Nov. 1801, 10589.—Dalmellington, 3. Dec. 1800, App. No. 2, *v. Poor.*—Dunse, 5. June 1745, Mor. 10553.—Crailing, 7. March 1767, *ib.* 10573.—Hutton, 6. Dec. 1770, *ib.* 10574.—Waddell, 14. June 1781, *ib.* 10583.—Brown, 4. March 1806, App. No. 4, *v. Poor.*—Tranent, 29. June 1737, *ib.* 10552.—Coldinghame, 28. July 1779, *ib.* 10582.—Edinburgh, 11. June 1806, App. No. 6, *v. Poor.*

LIABILITY OR RELIEF.

Paton, 20. Nov. 1772, Mor. 10582.—Abbey Parish of Paisley, 29. Nov. 1821.—Dalry, 17. Nov. 1791, *ib.* 14557.—Garvald, 14. Feb. 1817, F. C.

FUNDS.

Hill, 19. June 1739, Mor. 8011.—Hamilton, 23. Nov. 1752, *ib.* 10570.—Turnbull, 10. Aug. 1756, *ib.* 8013.—Dumfries, 18. Feb. 1783, *ib.* 8018.—W. Scott, 19. Feb. 1773, *ib.* 10577.—Beveridge, 26. June 1765, *ib.* 8014.—Straiton, 19. July 1688, *ib.* 9506.—Park, 12. Nov. 1668, *ib.* 3459.—Maxwell, 14. July 1774, *ib.* 9522.—Humbie, 15. Feb. 1751, *ib.* 10555.—Earl of Galloway, 22. Feb. 1810, F. C.—Christie, July 6. 1774, *ib.* 5755.—Hospital of Perth, 20. May 1795, *ib.* 5788.—Macausland, 16. Jan. 1793, *ib.* 2010.—Paterson, 10. Feb. 1803, App. No. 6, *v. Ali-*

ment.—Merchant Company of Edinburgh, 9. Aug. 1766, *ib.* 5750.—Campbell, 26. June 1752, *ib.* 7440.—Dick, 22. Jan. 1758, *ib.* 7446.—Thomson, 17. Nov. 1808, F. C.—Milroy, 21. Nov. 1815, F. C.—Cargill, 29. Feb. 1816, *ib.*—Inveresk, 28. May 1794, *ib.* 10585.—Laurie, 2. Dec. 1797, *ib.* 10587.—Ross, 16. Dec. 1800, App. No. 3, *v. Poor.*—Cochran, 11. Feb. 1823, S. & D. II. 201.

PRESCRIPTION.

The law of Prescription in Scotland depends entirely on statute. The object of it is to secure those in actual possession of any subject, heritable or moveable, against all claims or demands which are not insisted in within the years of prescription.

The limits are various, and correspond to the nature of the claim against which this defence is meant to be stated. This title, therefore, shall be divided into the following branches or divisions :

- I. *Long Negative Prescription.*
- II. *Positive Prescription.*
- III. *Vicennial Prescription of Retours.*
- IV. *Vicennial Prescription of Holograph Deeds.*
- V. *Decennial Prescription of Tutorial Accounts.*
- VI. *Septennial Prescription of Cautionary.*
- VII. *Sexennial Prescription of Bills and Promissory-Notes.*
- VIII. *Quinquennial Prescription.*
- IX. *Triennial Prescription of Shop Accounts, &c.*

x. *Triennial Prescription, applicable to Actions for Wrongous Imprisonment.*

I. LONG NEGATIVE PRESCRIPTION.

The act 1469, *cap.* 29, is in the following terms :

As anent obligations, that sall be followed in time cumming, except them that are dependand in the law, before the making of this act : It is advised, that the partie to quhome the obligation is maid, that hes interest therein, sall follow the said obligation, within the space of fourty zeires, and take document thereupon ; and gif he dois not, it sall be prescribed, and be of nane availe, the said fourty zeires beand runnin, and unpersewed be the partie.

And the statute 1474, *cap.* 55, declares as follows :

Anentis the acte maid of before of prescription of obligationes : It is ordained to be understandin in this wise, that all auld obligations maid of before, that is elder then the dait of fourtie zeiris not dependant in the law, in the time of the making of the said actes, sall be prescribed, and of na strength : and in likewise in time to cum all obligationes maid, or to be maid, that beis not followed within fourty zeires, sall prescribe, and be of nane availe.

These acts appear to have been originally intended to apply only to obligations respecting moveables ; but Mr Erskine states, that “ the act 1617, by which the “ positive prescription is established, hath also amplified the negative, which was understood formerly to “ be limited to moveable rights, and hath extended it, “ so as to strike against all actions competent on heritable bonds, reversions, contracts, and others not

“sued upon within forty years after their date.” This opinion is confirmed by decisions.

Stair, II. 12, 5.—Tait’s Justice of Peace, p. 377.—
Erskine, III. 7, 8-15.—Kames’ Elucid. No. 33.

DECISIONS.

Lauder, 27. Nov. 1630, Mor. 10655.—Ogilvy, 23. Dec. 1630, *ib.* 6541.—Minister of Abersharder, 7. Dec. 1633, *ib.* 10972.—Magistrates of Linlithgow, 21. June 1821, Shaw, I. 515.—Grantilly, 15. Dec. 1638, *ib.* 10750.—Stewart, 6. July 1711, *ib.* 10722.—Lockhart, July 1730, *ib.* 10736.—Anstruthers, 9. Dec. 1779, *ib.* 10713.—Kinloch, 27. May 1800, App. No. 5. and 7. v. “*Prescription*.”—Gordon, 1743, *ib.* 11274.—Vans, 14. June 1816, F. C.—Douglas, Heron & Co. 26. Nov. 1784, *ib.* 11127.—Ferrier, 9. July 1811, F. C.—Lord Arbuthnot, 3. March 1795, *ib.* 11133.—Bruce & Co. 10. Dec. 1765, *ib.* 4056.—Wright, 11. Dec. 1717, *ib.* 11268.—M’Nicol, 29. Nov. 1821, Shaw, I. 175.—Clerk, 1747, *ib.* 10662.—Lady Inveraw, 21. Jan. 1747, *ib.* 6554.—Paul, 8. Feb. 1814, F. C.—Stewart, 14. May 1823.—Crawford, 10. July 1821.—Agnew, 27. Nov. 1822.—Geddes, 28. May 1819.—Monro, 19. May 1812.—Chambers, 6. June 1823.—Stewart, 3. Jan. 1813.—Mill, 7. Feb. 1794, Mor. 10715.—D. of Roxburgh, 3. Nov. 1749, *ib.* App. No. 64, v. “*Prescription*.”

II. POSITIVE PRESCRIPTION.

The act 1617, *cap.* 12,

Statutes, findes, and declares, That whatsoever his Majesties lieges, their predecessors and authors have brooked heretofore, or shall happen to brook in time comming, by them-

selves, their tennents, and others having their rights, their lands, barronies, annuelrents, and other heritages, by vertue of their heritable infestments, made to them by his Majestie, or others their superiours and authors, for the space of fourty yeares, continually and together, following and insuing the date of their saids infestments, and that peaceably, without any lawful interruption made to them therein, during the said space of fourty yeares, that such persons, their heirs and successours, shall never be troubled, pursued, nor inquieted, in the heritable right and property of their saids lands and heritages foresaids, by his Majesty or others, their superiours and authors, their heirs and successours, nor by any other person pretending right to the same, by vertue of prior infestments, publicke or private, nor upon no other ground, reason or argument, competent of law, except for falsehood; providing they be able to shew and produce a charter of the saids lands, and others foresaids, granted to them or their predecessours by their saids superiours and authors, preceeding the entry of the saids fourty yeares possession, with the instrument of seasing following thereupon; or where there is no charter extant, that they shew and produce instruments of seasing, one or moe, continued and standing together for the said space of fourty yeares, either proceeding upon retours, or upon precepts of *clare constat*. Which rights his Majesty, with advice and consent of the Estates foresaids, findes and declares to be good, valide, and sufficient rights, (being claid with the said peaceable and continual possession of fourty yeares,) without any lawful interruption, as said is, for brooking of the heritable right of the same lands, and others foresaid; and sicklike his Majesty, with advice foresaid, statutes and ordaines, that all actions competent of the law, upon heritable bands, reversions, contracts, or others whatsoever, either already made, or to be made after the date hereof, shall be pursued within the space of fourty yeares after the date of the same, except the saids reversions be in-

corporate within the body of the infeftments, used and produced by the possessour of the saids lands, for his title of the same, or registrated in the clerk of register his books; in the which case, seeing all suspition of falsehood ceases most justly, the actions upon the saids reversions, ingrossed and registrated, ought to be perpetual; excepting always from this present act all actions of warrandize, which shall not prescribe from the date of the band or infeftment whereupon the warrandize is sought, but only from the date of the distresse which shall prescribe, it not being pursued within fourty years, as said is; and sicklike it is declared, that in the course of the saids fourty years' prescription, the years of minority and lesse age shall no wayes be counted, but only the yeares during the which the parties against whom the prescription is used and objected were majors, and past xxi. yeares of age: And his Majesty being careful that no person who hath any just claime bee prejudged of their actions, by the prescription of fourty yeares, already run and expired, before the date of this present act, hath, with advise foresaid, granted full liberty and power to them to intent their saids actions within the space of thirteen years next following the date hereof, which shall be als effectual as if the same had been intented within the said space of fourty years, prescribed by this present act; after the expiring of the which thirteen yeares, this present act shall have full force and effect, after the tennour thereof in all points; and neverthelesse, it is declared, that the persons at whose instance the foresaids actions shall be moved and intented within the said space of thirteen yeares shall not be compelled to insist in the saids actions at the desire of their parties upon the first summonds and citation thereof only, except that the saids first summons be called and continued, and the defenders of new summond thereby; in the which case, and no otherways, it is declared, that they may be compelled to insist at the instance of the party having entresse.

It is here mentioned, that a prescriptive title must be free from interruption during the whole period of forty years. One mode of effectually interrupting prescription is by raising a summons, bearing a challenge of the possessor's right. The act 1594, *cap.* 214,

Findis, decernis, and declaris, that nane of his Hienes' lieges may be compelled, after the space of fourtie zeires, to produce procuratories or instrumentes of resignation, precepts of *clare constat*, or utheris precepts of saisings of landes, or annualrentes, quhair of the present heretable possessours and their predecessoures, and anthoures, and utheris persons, be vertew of liferentes reserved in the saidis infestments, are, and was in possession be the space of fourtie zeires togidder, and that the wanting and in-laik theirow, nor nane of them, sall be na cause of reduction of the infestments granted to the proprietares, or their predecessoures or authores of the lande or annualrentes, quhair of the charter or charters (makand mention of the resignation or resignations to have bene maid, and the instrumentes of saisings, makand mention of the preceptes of saisings be vertew quhair of the saisings wer given) are extant: And willis, statutis, and ordainis, that this act sall be extended to all procuratories, and instruments of resignation, precepts of *clare constat*, or uthers precepts of saisings, the wanting and inlaik quhair of, nor nane of them, sall be na cause of reduction, nor uther quarrell quhat-sum-ever, after the space of fourtie zeires, quhair infestments hes tane effect be possession, be the said space of fourtie zeires, in maner abone rehearsed, and quhair the charters and instrumentes of saisings are extant, as said is.

In connection with this point, the act 1696, *cap.* 19, requires, that the summons shall be recorded in a certain register, similar to the procedure observed in regard to seisins and inhibitions. This act is quoted

entire, *voce* "*Registration*;" and by the statute 1669, *cap.* 10, it is ordained,

That all interruptions, as to the rights of lands be citations, shall in time hereafter be execut by messengers-at-arms, and against the defenders personally or at their dwelling-place, and at the paroch churches in the time of divine service, or immediatly after; and in case the parties be forth of the kingdom, at the mercat cross of Edinburgh, and pier and shore of Leith, upon threescore dayes: And that all citations that shall be made use of for interruptions, whether in real or personal rights, be renewed every seven years, otherwayes to prescrive, except the parties be minors; in which case this act is not to be extended against them, during the years of their minority.

This act is explained by the act 1685, *cap.* 15, which declares,

That all citations used for interruptions preceeding that act, shall prescribe within seven years after the date of this act, if they be not renewed within that time: And further statutes and ordains, That in citations for interruption as to rights of lands and wakenings thereof, copies of the citation shall be affixed on the most patent door of the paroch church, and that over and beside what is required by the said act anent these executions.

Ersk. III. 7. 1. and 38.

DECISIONS.

Earl of Home, 28. July 1758, *Mor.* 10777.—*Duke of Roxburgh*, 5. June 1713, *ib.* 10883.—*Magistrates of Lauder*, 15. Nov. 1754, *ib.* 1987.—*Maule*, 2. Dec. 1817, *F. C.* — *Muir*, 2. July 1746, *Mor.* 10820.—*Irvine*, Nov. 1764, *ib.* 10830.—*Chatto*, 25. June 1745, *ib.* 15657.—*Scott*, 1. July 1779, *ib.* 13519.—*Crawford*, 20. Dec. 1822, and 2. June

1826, S. & D.—Neilson, 26. Feb. 1823, *ib.*—Caitcheon, 22. Jan. 1791, Mor. 10810. — E. Marchmont, 28. July 1724, *ib.* 10797.—Middleton, 22. Dec. 1774, *ib.* 10944.—Bruce, 6. Dec. 1770, *ib.* 10805.—Smith, &c. June 1752, *ib.* 10803.—Durham, 24. Nov. 1802, *ib.* 11220, affirmed on appeal, 5. March 1811.—Zuille, 4. March 1813, F. C.—L. Reay, 25. Nov. 1823, S. & D.—Maxwell, 21. June 1808, Mor. App. No. 8, *voce Prescription*, affirmed. — Lumsdaine, 13. June 1811, F. C. affirmed. — Routledge, 19. May 1812, and 16. Dec. 1819.—D. Hamilton's Trustees, 18. May 1824, S. & D.—Dalziel, 17. Jan. 1810.—Mearay, 17. Jan. 1811, F. C.

III. VICENNIAL PRESCRIPTION, APPLICABLE TO REDUCTION OF RETOURS AND SUMMONS OF ERROR.

The act 1617, *cap.* 13, is in the following terms :

For as much as by act of Parliament, made by his Majesty's most noble progenitour King James the Fourth, of worthy memory, upon the 13. day of June 1494, it was statute and ordained, That all summonds of errour or inordinate processe be pursued within the space of three yeares after the determination of the inqueist, or service, the party being of lawful age, and within the realme, otherwise to prescribe, as in the said act and statute at more length is contained : And because the true meaning and intention of the said act was, That our Sovereigne Lord's lieges, being upon the said inqueist and service, should not lye under the paine and danger of errour, after the space of three years, and no wayes to hurt or prejudice the righteous heire, and nearest of kin, who by the law of God and man was to succeed in the right of blood and succession to their predecessours, and to their lands and heritages, *jure sanguinis* : Therefore our said Sovereigne Lord, with advice and consent of the Estates

foresaid, statutes and ordains, That the said act of Parliament shall no wayes hurt nor prejudice the nearest of kin to seek reduction of the saids retours, and service, to be past and exped in time comming, and that within the space of twenty years, immediatly following the date of the saids retours and services; and if the saids summonds of reduction be not intended, executed, and pursued, before the expiring of the saids twenty yeares, that the said action of reduction of the said retour and service shall prescribe in the selfe, and no party to be heard thereafter to pursue the same reduction: And als declares, That hereafter it shall no wayes be lawful to pursue the persons of inquest for wilful errorr, except they be pursued therefore within the space of three yeares next after the date of the said retour and service: it is alwayes declared, that these presents shall no wayes be prejudicial to whatsoever persons, who have acquired rights of lands and heritages before the date hereof, *bona fide*, from persons already retoured thereto in any time bygone; but the saids persons, who have *bona fide* acquired, to brook their rights according to the law then standing.

See Title "Brieves," Vol. I. p. 176.—Ersk. III. 7. 19.

Drummond, 17. May 1793, Mor. 6936.—Lane, 17. Jan. 1782, *ib.* 5179.

IV. VICENNIAL PRESCRIPTION OF HOLOGRAPH DEEDS.

To render deeds probative, they must either be prepared in compliance with the statutory forms (explained in the title "Proof" *post.*), or be wholly written by the party himself. The danger of forgery in the former case being smaller, the provisions of the act 1617, *cap.* 12, apply to all such writings. But, in regard to holograph documents, the risk of forgery is much greater; therefore, the statute 1669, *cap.* 9,

“ Statutes and ordains, that holograph missive letters, and
 “ holograph bonds, and subscriptions in compt books with-
 “ out witnesses, not being pursued for within twenty years,
 “ shall prescribe in all time thereafter, except the pursuer
 “ offer to prove, by the defender’s oath, the verity of the said
 “ holograph bonds, and letters and subscriptions in the
 “ compt books.”

Erskine, III. 7. 26.—Bell, I. 254.

Home, 19. Jan. 1773, Mor. 10992.—Brown, 17. July 1741,
ib. 9417.—Dalziel, 19. Nov. 1784, *ib.* 10994.

V. DECENNIAL PRESCRIPTION OF TUTORIAL ACCOUNTS.

By the act 1696, *cap.* 9, it is ordained,

That all actions of count and reckoning, competent to pupils and minors against their tutors and curators, for making their accounts not pursued and insisted in within the space of ten years after the majority of the said pupils and minors, or after their death, they dying in their minority, shall, after that time, prescribe for ever; and the said tutors and curators, and their successors, shall be as fully exonerate and liberate, as if the said pupils and minors, after their majority, had fully and amply discharged the same. And declares, That the contrary action, at the instance of tutors and curators against their pupils and minors, shall prescribe in the same manner within ten years; declaring alway, That this prescription shall not run against minors; as also, That all the foresaid actions already raised, or competent to be raised by either of the said parties *hinc inde*, shall in like manner prescribe within ten years after the date of this act.

Another decennial prescription was introduced by a clause in the statute 1669, *cap.* 9, which declares,

That all actions proceeding upon warnings, spuilzies, ejections, arrestments, or for ministers' stipends, and others foresaid, shall prescribe within ten years, except the said actions be wakened every five years ; but prejudice alwayes of any of the saids actions, which by former acts of Parliament are appointed to prescribe in a shorter time. And also statutes and ordains, That holograph missive letters, and holograph bonds, and subscriptions in compt-books without witnesses, not being pursued for within twenty years, shall prescribe in all time thereafter ; except the pursuer offer to prove, by the defender's oath, the verity of the saids holograph bonds and letters, and subscriptions in the compt-books. It is alwayes hereby declared, That prescriptions shall not run, in any of the cases foresaid, against minors during the years of their minority.

And there is a supplementary statute, 1685, *cap.* 14, to explain this clause. It is in these words :

Our Sovereign Lord, considering, That at making of the ninth act of the first session of the 2d Parliament of King Charles II. concerning prescriptions, in that part of it relating to actions proceeding upon warnings, spuilzies, ejections, arrestments, or for ministers' stipends, and others foresaid, the cases that existed before that act were not taken into consideration : therefore, his Majesty, with consent of his Estates of Parliament, statutes and ordains, That all such actions proceeding upon any diligence mentioned in that act, already intended either before the said act 1669, or since, shall prescribe within five years after the date of this act, if they be not wakened within that time ; and all actions to be raised hereafter upon the foresaid grounds shall prescribe in five years, if they be not wakened within that time. And his Majesty wills and declares the foresaid 9th act to stand in full force as to the rest of the tenor thereof.

Erschine, III. 7. 25.

VI. SEPTENNIAL PRESCRIPTION OF CAUTIONARY OBLIGATIONS.

The statute 1695, *cap. 5*, is as follows :

His Majesty, and the Estates of Parliament, considering the great hurt and prejudice that hath befallen many persons and families, and oftentimes to their utter ruin and undoing, by men's facility to engage as cautioners for others, who afterwards failing, have left a growing burden on their cautioners without relief : therefore, and for remedy thereof, his Majesty, with advice foresaid, statutes and ordains, That no man binding and engaging for hereafter, for and with another conjunctly and severally, in any bond or contracts for sums of money, shall be bound for the said sums for longer than seven years after the date of the bond, but that from and after the said seven years, the said cautioner shall be *eo ipso* free of his caution : and that whoever is bound for another, either as express cautioner, or as principal, or co-principal, shall be understood to be a cautioner, to have the benefit of this act : providing that he have either clause of relief in the bond, or a bond of relief apart intimate personally to the creditor at his receiving of the bond ; without prejudice always to the true principals being found in the whole contents of the bond or contract : as also of the said cautioners being still bound conform to the terms of the bond within the said seven years, as before the making of this act ; as also providing that what legal diligence by inhibition, horning, arrestment, adjudication, or any other way, shall be done within the seven years by creditors against their cautioners, for what fell due in that time, shall stand good, and have its course and effect after the expiring of the seven years, as if this act had not been made.

Erskine, III. 7. 22.

DECISIONS.

Ross, 11. Dec. 1729, Mor. 11014.—Douglas, Heron & Co. 20. Nov. 1792, *ib.* 11032.—Bell, 14. Feb. 1727, *ib.* 11039.—M'Rankin, 22. June 1714, *ib.* 11034.—Park's Creditors, 16. Feb. 1785, *ib.* 11031.—Borthwick, 4. Feb. 1715, *ib.* 11008.—Millers, 19. Feb. 1762, *ib.* 11027.—Robertson, 2. Dec. 1736, *ib.* 11010.—Monro, 22. Feb. 1741, *ib.* 11017.—Hope, 4. Feb. 1715, *ib.* 1109.—M'Kinlay, 14. Feb. 1781.—Balvaird, 18. Jan. 1709, *ib.* 1105.—Stewart, July 1726, *ib.* 11010.—Strang, 5. Jan. 1709, *ib.* 1105.—Bruce, 26. June 1793, *ib.* 11033.—Cuthbertson, 23. May 1823, Shaw, II. 330.—Rutherford, 8. Feb. 1715, *ib.* 11012.—Lady Gordon, 16. Nov. 1748, *ib.* 11025.—Caves, 4. Dec. 1742, *ib.* 11020.—Hog & Co. 9. July 1765, *ib.* 11029.—Bertram, Gardner & Co. 3. March 1795.—Reid v. Maxwell, 17. Feb. 1780.—Anderson, 25. May 1821, Shaw.—Hog, 13. June 1826.—Sharp, 24. June 1808.—M'Niel, 21. June 1825.—M'Indoe, 18. Nov. 1824.—Douglas, Heron & Co. 1. Mar. 1793, *ib.* 11045, affirmed on appeal.—Rowand, 13. June 1738, *ib.* 11041.—Irvine, 7. Jan. 1752, *ib.* 11043.—Reid, 17. Feb. 1780, *ib.*—Home, 19. Jan. 1773, *ib.* 10992.

VII. SEXENNIAL PRESCRIPTION OF BILLS OF EXCHANGE AND PROMISSORY-NOTES.

The act 12. of Geo. III. *cap.* 72, and other statutory provisions, have already been quoted in the title "*Bills.*"

Erskine, III. 7. 29. note.—Thomson on Bills, p. 695.—Bell, I. 394.

DECISIONS.

Gordon, 23. June 1784, Mor. 7532.—Douglas, Heron & Co., 19. Nov. 1793, *ib.* 4602, affirmed, 11. Nov. 1796.—Tweedie, 5. Mar. 1782, *ib.* 11125.—Stephenson, 16. June 1807, *ib.* App. No. 20. *voce* “*Bill of Exchange*.”—Laidlaw, 31. May 1826.—M^cNiel, &c. 21. June 1825.—Philp, 15. Jan. 1800, *ib.* App. No. 9. *voce* “*Bill of Exchange*.”—Clarkson’s Trustees, 8. June 1820, F. C.—Houston, 31. May 1822.—Scott, 3. Feb. 1784, *ib.* 11126.—Russell, 23. May 1792, *ib.* 11130.—Lindsays, 19. May 1797, *ib.* 11137.—Viscount Arbuthnot, 3. Mar. 1795, *ib.* 11133.—Buchan, 31. Jan. 1787, *ib.* 11128.—Stewart, 5. Dec. 1823.—Stirling, 11. Mar. 1817, F. C.—Houston, 19. May 1795.—Sinclair, 19. Dec. 1823.—Horsburgh, 13. Feb. 1811.—Ferguson, 7. Mar. 1811.—Black, 16. Jan. 1823.—M^cTavish, 25. Jan. 1825.—M^cIndoe, 18. Nov. 1824.—Hannay’s Trustees, 31. Jan. 1823.—Armstrong, 16. May 1804, *ib.* 11140.

VIII. QUINQUENNIAL PRESCRIPTION, *applicable to wholesale bargains, &c. and not falling under the triennial limitation.*

The first part of the statute 1669, *cap.* 9, ordains,

That all arreastments to be used hereafter upon decreets, registrate bonds, dispositions, or contracts, not pursued and insisted on within five years after the laying on thereof, shall after that time prescribe: And that all arrestments already used upon the ground aforesaid shall prescribe within five years after the date hereof: And that all arrestments, used or to be used upon dependance of actions, shall likeways prescribe within five years after sentence is obtained in the saids actions, if the saids arrestments be not pursued or insisted on within that time: And likeways, his Majesty, with advice foresaid, statutes and ordains, That ministers’ sti-

pend and multars not pursued for within five years after the same are due: And likewise mails and duties of tennents, not being pursued within five years after the tennents shall remove from the lands for which the mails and duties are craved, shall prescribe in all time coming; except the saids ministers' stipends, multars, mails and duties shall be offered to be proven to be due and resting owing, by the defenders their oaths, or by a special writ under their hands, acknowledging what is resting owing: And that all bargains concerning moveables or sums of money, probable by witnesses, shall only be probable by writ or oath of party, if the same be not pursued for within five years after the making of the bargain.

Erskine, III. 7, 20. Decisions referred to in the notes.

IX. TRIENNIAL PRESCRIPTION OF SHOP ACCOUNTS, &c.

The act 1579, *cap.* 83, declares,

That all actions of debt for house mails, men's ordinaries, servants' fees, merchants' accounts, and other the like debts, that are not founded upon written obligations, be pursued within three years, otherwise the creditor shall have no action, except he either prove by writ or by oath of his party.

DECISIONS.

Ross, 12. Feb. 1680, Mor. 11089.—Lesly, 15. Nov. 1808, F. C.—Wilson, 7. Feb. 1826, S. & D. IV. 427.—Ormiston, 11. Nov. 1709, *ib.* 11093.—Wilson, 28. July 1680, *ib.* 11090.—Graham, 26. Feb. 1670, *ib.* 11086.

Ersk. III. 7, 18,—and IV. 11, 13.

Donaldson, 15. Jan. 1766, *ib.* 11110.—Bryson, 16. Nov. 1825, S. & D. IV. 180.

There are other two triennial prescriptions, one ap-

plicable to actions of spuilzie and ejection, and the other to actions of removing.

The statute 1579, *cap.* 81, ordains, “ that all actions of spuilzies, ejection, and others of that nature, be pursued before the ordinary judge within three years after the committing thereof, otherwise the pursuer’s alleged hurt never to be heard thereafter : Providing that this act extend not to minors, but to pursue within three years of their perfect age.” This statute was subsequently ratified by the act 1581, *cap.* 119. The principle of this statute is quite consistent with the clause of the act 1669, *cap.* 9, quoted in Div. V.: that clause refers to the prescription of “ actions *proceeding upon* warnings, spuilzies,” &c. and reserves expressly the operation of prior statutes, regulating the warnings or spuilzies.

The statute 1579, *cap.* 82, declares, “ that all actions of removing be pursued within three years after the warning, with certification if they fail, the warnings shall never be heard thereafter to pursue the same upon that warning.”

Erskine, III. 7. 18.

X. TRIENNIAL PRESCRIPTION, APPLICABLE TO ACTIONS FOR WRONGOUS IMPRISONMENT.

By the act 1701, *cap.* 6, it is ordained, “ That action and process for wrongous imprisonment shall prescribe if not pursued within three years after the last day of the wrongous imprisonment ; and process being once raised, the same shall prescribe if not insisted in yearly thereafter.” See title “ *Wrongous Imprisonment.*”

PRISONS. See "BURGH ROYAL."

PROCESS. See "COURT OF SESSION."

PROOF.

Where the parties in a cause differ as to the matter at issue, the remedy is of three kinds : *1st*, The cause may be sent to the Jury Court, to have the truth expiscated by the examination of witnesses and other evidence in presence of a jury, whose verdict will decide the question : *2dly*, The party may refer the whole cause to the defender's oath ; or, *3dly*, The doubt may be resolved by the production of documents ; and the only inquiry that will then remain will be, whether these documents be genuine, and such as the law reckons *probative*.

The method of proof by a jury trial has already been noticed, *v.* "*Jury Court*."

With regard to a proof by oath of party, the general rule is, that a pursuer may, in all cases of a civil nature, refer the libel to the defender's oath. In criminal cases, however, no one can be called on to depone, if his evidence would involve him in the guilt of a crime for which he might be imprisoned. The act 46. of Geo. III. *cap.* 37, "to declare the law with

“respect to witnesses refusing to answer,” is as follows :

“Whereas doubts have arisen whether a witness can, by law, refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish, or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of his Majesty, or of some other person or persons :” Be it therefore declared and enacted, &c. That a witness cannot, by law, refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only, or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of his Majesty, or of any other person or persons.

By the acts 1. of Geo. I. *cap.* 5, and 8. of Geo. I. *cap.* 5, the solemn affirmation of quakers is declared to be received with the same effect as an oath.

With regard to the case of usury, the statute 1597, *cap.* 247, after describing in what manner the crime of usury may be committed, proceeds thus :

“And the said nullity upon the causes foressaid to be received summarily as well by way of exception and reply as by way of action ; and to be tried by the oath of party and all other lawful probation conjoined therewith competent of the law.” And the statute 1600, *cap.* 7, after complaining that the obscurity of the preceding act prevented its being carried into full effect declares, That “it shall be leisom to prove the said summons and contravening of the

“ said acts, or any of them, anent the taking of unlawful and
 “ exorbitant profit for sums of money, *by writ or oath of*
 “ *party* receiver of the said unlawful profit, and by the wit-
 “ nesses inserted in the said security made for the said sums,
 “ without receiving of the oath of the party giver of the said
 “ unlawful profits, for eschewing of all occasion of perjury
 “ which might be suspected to proceed thereupon.”

Ersk. IV. 2. 9.—Hume, II. 325.—Tait on the Law of
 Evidence, p. 236.

Written documents may either be original and principal deeds, or certified extracts from authorised records. The statutory requisites of a probative deed are as follow :

The act 1540, *cap.* 117, besides the usual solemnity of sealing, declares,

That because men's seals may of adventure be tint, quhair-throw great hurt may be genered to them that awe the same, and that men's seals may be feigned or put to writings after their decease, in hurt and prejudice of our Sovereign Lord's lieges, that therefore no faith be given in time coming to any obligation, bond or writing under a seal, without the subscription of him that awe the same, and witnesses ; or else if the party cannot write, with the subscription of a notary thereto.

The act 1555, *cap.* 29, “ anent sealing and signing
 “ reversions and writs thereto belonging,” declares as follows :

In likewise it is statute and ordained, that all reversiones to be maid in time to cum, and all bandes and obligationes, for making, sealing, and delivering of reversions, be maid under the seale and subscription of the promittar and giver thereof: And gif the partie cannot subscribe, to subscribe

the same with his hand, led at the pen be ane notar. And gif ony instrument, or uther kinde of writing be maid for giving of reversiones, or bearand and conteinand reversion, that writing or instrument sall make na faith, bot gif it be insert with consent of the parties in judgment, in the buikes of some ordinar judge; except gif it happenis within burgh, that the time of resignation of landes in the baillies handes, the clerk of the burgh, notar to the saising giving be the said resignation, be required then instantlie of instrument in his handes of the reversion, before the samine witnesse required in the instrument of saising, and gives his instrument thereupon: Quhilk sall make faith as sufficient reversion. And als, that all discharges of reversiones in all times to cum be sealed and subscribed in manner abone written: And give the partie cannot subscribe, to subscribe the samin with his hande, at the pen led, be ane authentick notar, and sealed with his seale, as is abone written.

The act 1579, *cap.* 80, declares, that all deeds

Sall be subscribed and seilled be the principall parties, gif they can subscribe, utherwise be twa famous notars befoir four famous witnesses, denominat be their speciall dwelling places, or sum uther evident takens, that the witnesses may be knawen, being present at that time, utherwise the saidis writs to mak na faith.

The act 1584, *cap.* 4, declares,

That the act anent the sealing of writtes of importance is nocht to be understand of sik writtes, contractes, or obligations, as ar be the parties agreed upon to be registrat in the buikes of our Soveraine Lordis counsell, or uther ordinar judges, seeing the parties consents to registrat the same, quhilk is ane greater solemne act, nor the sealling thereof. And that the non-sealing of the same sall be na exception against the validitie of the saidis writtes, being subscribed be the parties, and agreed on to be registrat, as said is.

Quhilkis his Majestie, and Estaites foresaidis, decernis to neede na sealles. Neither that the said act, anent the saidis writtes, to be subscribed be twa notaris, sall be extended to instrumentes of seasing, quhair-unto ane faithful notar, with ane reasonable number of honest and famous witnesses is sufficient. And this declaration to be observed as ane law, in all times cumming.

The act 1593, *cap.* 175, declares, that all deeds

Sall make special mention, in the hinder end thereof, before the inserting of the witnesses therein, of the name, surname, and particular remaining place, diocesie, and uther denomination of the writer of the bodie of the foresaid original writtes and evidentes, utherwaies the same to make na faith in judgment, nor out-with in time cumming: And to begin upon the first daye of November nixt to cum.

The act 1672, *cap.* 21, declares,

That it is only allowed for noblemen and bishops to subscribe by their titles, and that all others shall subscribe their christened names, or the initial letter thereof with their surnames, and may, if they please, adject the designations of their lands, prefixing the word *of* to the saidis designations: And the Lyon king at armes and his brethren are required to be carefull of informing themselves of the contraveeners hereof, and that they acquaint his Majestie's council therewith, who are hereby impowered to punish them as persons disobedient to, and contraveeners of the law.

The statute 1681, *cap.* 5, declares,

That only subscribing witnesses in writs to be subscribed by any partie hereafter shall be probative, and not the witnesses insert not subscribing; and that all such writs to be subscribed hereafter, wherein the writter and witnesses are not designed, shall be null, and are not supplyable by con-

descending upon the writer, or the designation of the writer and witnesses: And it is farther statute and declared, That no witness shall subscribe as witness to any partie's subscription, unless he then know that partie, and saw him subscribe, or saw or heard him give warrand to a nottar or nottars to subscribe for him, and in evidence thereof touch the nottar's pen, or that the partie did at the time of the witness's subscribing acknowledge his subscription; otherwise the saids witnesses shall be reputed and punished as accessorie to forgerie: And seing writting is now so ordinary, his Majesty, with consent foresaid, doeth enact and declare, That no witnesses but subscribing witnesses shall be probative in instruments of seising, instruments of resignation *ad remanentiam*, instruments of intimation of assignations, translations, or retrocessions to bands, contracts, or other writs, which shall happen to be subscribed in any time hereafter: And that none but subscribing witnesses shall be probative in executions of messengers, of inhibitions, of interdictions, hornings or arrestments; and that no execution whatsoever to be given hereafter shall be sufficient to infer interruption of prescription in real rights, unless the same be done before witnesses present at the doing thereof subscribing: And that in all the saids cases the witnesses be designed in the bodie of the writt instrument, or execution *respectivè*, otherwise the same shall be null and void, and make no faith in judgment, nor out-with.

By the act 1686, *cap.* 3, all interlocutors must be signed by the judge who pronounced them.

The act 1686, *cap.* 4, ordains all executions to be signed by witnesses. See title "*Execution of Summons.*"

The act 1686, *cap.* 17, "for writing seisins by way of book," declares,

That it shall be lawful for parties, if they think fit, to cause write and extend their seisins by way of book, the attestation of the nottar condescending upon the number of the leaves of the book ; and each leaf being signed by the nottar and witnesses to the giving of the seisin ; and ratifie sall seisins already written by way of book, by warrant of his Majesty's Privy Council.

And the act 1696, *cap.* 15, declares,

That it shall be free hereafter, for any person, who hath any contract, decret, disposition, or other security above mentioned to write, to choose whether he will have the same written in sheets battered together as formerly, or to have them written by way of book, in leafs of paper, either in folio or quarto: Providing, That if they be written book-ways, every page be marked by the number, first, second, &c. and signed as the margins were before, and that the end of the last page make mention how many pages are therein contained, in which page only witnesses are to sign in writs and securities where witnesses are required by law ; and which writs and securities being written book wayes, marked and signed as said is, his Majesty, with consent foresaid, declares to be as valid and formal, as if they were written on several sheets battered together, and signed on the margine, according to the present custom.

The act 1696, *cap.* 25, " anent blank bonds and " trusts," declares,

That, for hereafter, no bonds, assignations, dispositions, or other deeds, be subscribed blank in the person or persons' name, in whose favours they are conceived, and that the foresaid person or persons be either insert before, or at the subscribing, or at least in presence of the same witnesses who are witnesses to the subscribing before the delivery: Certi-

fyng, that all writs otherwise subscribed and delivered blank as said is shall be declared null: And further, That no action of declarator of trust shall be sustained, as to any deed of trust made for hereafter, except upon a declaration or back bond of trust lawfully subscribed by the person alleged to be the trustee, and against whom, or his heirs or assignees, the declarator shall be intended, or unless the same be referred to the oath of party *simpliciter*: Declaring, That this act shall not extend to the indorsation of bills of exchange, or the notes of any trading company.

EXTRACTS.

There is a certain description of writings which are required by act of Parliament to be recorded within a certain limited time from their dates. To this class belong the diligences of horning and inhibition, and reversions and instruments of seisin. With regard to such documents, there are the following statutes.

The act 1469, *cap.* 28, declares, “and because such
“ reversions may of case be tint, our Sovereign Lord
“ shall make the said reversions be registered in his register if it be required, on their expenses, that is to
“ say, of ilk ane a half mark, the whilk registered shall
“ have the same force as the principal reversion were
“ shewed for the time.”

In the statute 1579, *cap.* 75, there is this clause:
“ The whilk letters (of horning) and executions there-
“ of, so registered and subscribed on the back, &c. shall
“ be esteemed as authentic, and shall have effect and
“ force in whatsoever judgment they happen to be

“ produced, ay and while the party so denounced to the
 “ horn obtain himself orderly relaxed therefrom.”

The act 1581, *cap.* 119, after insisting on the expediency and necessity of recording inhibitions, declares,
 “ The extract of the whilk register shall have as great
 “ faith and strength as if the original were shewn, except the parties having interest to oppose against the
 “ said inhibitions and interdictions offer to improve the
 “ same by way of action or exception ; in the which
 “ case, the party purchaser of the said letters, and others
 “ having interest to defend the same, shall be holden
 “ to produce the principals and originals, notwithstanding that they be registrate as said is.”

The act 1617, *cap.* 16, establishing a register for reversions and instruments of seisin, declares, “ The extract of the which register shall make faith in all
 “ cases, except where the writs so registrated are offered to be improven.” Seisins and reversions within burgh are expressly excepted from the act.

But, to supply that exception, the act 1681, *cap.* 11, places seisins and reversions *within burgh* on the same footing as to registration with other deeds of the same description.

Stair, IV. 42. 6.—Erskine, III. 2. 22.—Bell, I. 322.
 —Tait on Evidence, p. 147.

ACT OF SEDERUNT.

A. S. 17. Nov. 1599, declares, “ That extracts of contracts, obligations, &c. registrat in the books of council
 “ &c. extractit and subscrivit be the clerk of register, and
 “ producit in foreign countries before ordinar judges therein, sall make as great faith as the principals.”

DECISIONS.

Ross, 3. July 1792, Mor. 16853.—Yorkstoun, &c. 2. Dec. 1794, *ib.* 16856.—Cullen, Dec. 1731, *ib.* 16842.—Hardie, 6. Dec. 1810, F. C.—Earl of Fife, 30. Nov. 1819, *ib.*—Archibalds, 17. Nov. 1787, Mor. 16907.—Douglas, Heron & Co. 28. Nov. 1787, *ib.* 16908.—Frank, 19. July 1793, *ib.* 16822.—Lockhart, 16. Feb. 1815, F. C.—Doig, 9. Jan. 1741, Mor. 16908.—Wemyss, 5. June 1821.—Stewart, 2. March 1815.—Bank of Scotland, 17. Feb. 1790.—Brown, 11. March 1809.—Swany, 12. Dec. 1807, Mor. App. No. 7, *voce Writ.*—Sibbald, 18. Jan. 1776, *ib.* 16906.—Richardson, 28. Feb. 1811, F. C.—Condie, 26. June 1823.—Robertson, 1. Dec. 1823.

RANKING & SALE.—See BANKRUPT.

REGISTRATION.

The advantages of registration, in almost every department of business, appear from the acts of Parliament by which the several records have been established and regulated,

By the 24th article of the treaty of Union, it is declared, that “ the records of Parliament, and all other
 “ records, rolls, and registers whatsoever, both public
 “ and private, general and particular, and warrants
 “ thereof, continue to be kept as they are within that
 “ part of the united kingdom now called Scotland, and
 “ that they shall so remain in all time coming, notwithstanding the Union.”

The statutes establishing the various records shall be quoted in the following arrangement :

- I. *Those which require the registration of seisins, &c.*
- II. *The act applicable to resignations ad remanentiam.*
- III. _____ *to charters from subject superiors.*
- IV. *Clause of the act 1685, establishing a register for entails.*
- V. *The acts relative to summonses for interrupting prescription.*
- VI. *The act concerning adjudications.*
- VII. _____ *probative writs.*
- VIII. *The various enactments respecting hornings.*
- IX. *The act regarding inhibitions.*
- X. *The acts respecting charters, &c. passing the Great and Privy Seals. And,*
- XI. *The statute establishing the rule of competition in real rights.*

To which will be subjoined a sketch of those statutes which prescribe forms and regulations to be observed by the keepers of the several records.

I. SEISINS AND REVERSIONS.

The act 1617, *cap.* 16, is in the following terms :

Our Sovereigne Lord, considering the great hurt sustained by his Majestie's lieges, by the fraudulent dealing of parties, who having annallied their lands, and received great summes of money therefore, yet by their unjust concealing of some privat right formerly made by them, render the sub-

sequent alienation done for great sums of money altogether unprofitable, which cannot be avoided, unlesse the saids private rights be made publick and patent to his Highnes' lieges; for remedy thereof, and of many inconveniences which may ensue thereupon, his Majesty, with advice and consent of the Estaites of Parliament, statutes and ordeins, That there shall be ane publick register, in the which all reversions, regresses, bands, and writs for making of reversions or regresses, assignations thereto, discharges of the same, renunciations of wadsets, and grants of redemption, and siklike all instruments of seasing, shall be registrat within threescore dayes after the date of the same. It is always declared, that it shall not be necessar to registrate any bands and writs for making of reversions or regresse, unlesse the seasing passe in favours of the parties makers of the saids bands or writs; in the which case it is ordained, that the same shall be registrat within threescore dayes after the date of the seasing, the extract of the which register shall make faith in all cases, except where the writs so registrated are offered to be improven. And if it shall happen any of the saids writs which are appointed to be registrated, as said is, not to be duely registrated within the said space of threescore dayes; then, and in that case, his Majesty, with advice and consent foresaid, decernes the same to make no faith in judgment by way of action or exception in prejudice of a third party, who hath acquired a perfect and lawful right to the saids lands and heritages; but prejudice alwayes to them to use the saids writs against the partie maker thereof, his heires and successors. It is always declared, that this present act shall no wayes be extended to instruments of seasing and reversions therein contained, given by provest and bailies of free burghs royal, of lands lying within their liberties and freedomes, halden by the saids burghs in free bourgage, of his Majesty, nor to na other heritable writs thereof, nor yet to reversions incorporate in the body of the infestments, made to the per-

sons against whom the saids reversions are used. It is also declared, that if any renunciations or grants of redemption which shall happen to be consigned in processe betwixt parties shall be registrat within threescore dayes after the dates of the decreets whereby the same shall be ordeined to be given up to the parties having right thereto, the same shall be sufficient. And to the effect the said register may presently and in all time comming be the more faithfully kept; therefore our said Soveraine Lord, with advice and consent foresaid, statutes and ordeins the same registers and registrations foresaids to be insert therein, to appertain and belong to the present clerk of register, and his deputes to be appointed by him to that effect; and decernes and ordeines the same registers to be annexed and incorporate with the said office, and that the clerk of register present and to come have the said office as ane proper part and pertinent of the clerk of register his office, make and constitute particular deputes, ane or moe, for all the dayes of their lifetimes, or otherwise as he shall think expedient, of good fame, literature, and conversation, for whom he shall be answerable, and who shall be resident within the towns and places after specified, at all times to receive fra the parties their evidents, and to registrat the same within the space of fourtie-eight hours next after the receipt thereof, and to ingrosse the whole body of the writ in the register, under the pain of deprivation of the clerk of his place and service, and of the office of notarie in all time hereafter; and within the same space shall deliver to the presenters of the samine, their evidents marked by him, with the day, moneth, and year of the registration, and in what leafe of the book the same is registrate; and shall take allannerly for his paines twenty-six shillings eight pennies money of this realme, as the price of ilk leafe of his register, containing no lesse then is in this present act; and in case the leafe contain lesse to take lesse accordingly, and so proportionally for every page of the

leafe and part of the page, and according thereto shall take for registering of every one of the saids evidents; and the saids registers to bee filled up by the saids deputes, to be marked by the clerk of the register, and his deputes to be appointed by him to that effect, with ane note of the particular number of the leaves that the same shall containe; and the saids registers after the filling up of the same to be reported to the said clerk of register, to remain with him and his deputes, and bee patent to all our Sovereigne Lord's lieges, and extracts thereof to be given by him and his deputes to be appointed by him, during all the days of their lifetime, or otherwayes as he shall think expedient for that effect, to all shall have adoe with the same, which shall make as great faith as the principals, except in case of improbation.

The rest of the statute is just an enumeration of the several towns in Scotland where a particular register is to be kept, which arrangement is under the controul of the Lord Clerk-Register.

ACTS OF SEDERUNT.

By Acts of Sederunt, 4. Jan. 1677, and 15. July 1692, the keepers of this record must complete their minute books.—See also A. S. 10. July 1811.

Respecting the manner of engrossing the writings in the record, the Act of Sederunt, 17th January 1756, declares, that the full seisin, and especially the doquet, must be inserted in the register, under the certification of nullity.

SEISINS IN BURGH.

The act 1681, c. 11, declares,

That in time coming, all instruments of seising of tenements within burgh royal, or liberties, or freedoms thereof holding in burgage, and all reversions, regresses, bands, or writs, for making reversions, or regresses, assignations

thereto, discharges thereof, renunciations of woodsets, and grants of redemption of the saids tenements within burgh, or the liberties, or freedoms thereof holding burgage, shall be insert in the town-clerk's books of the several burghs *respectively*, within threescore dayes after the date of the same, excepting reversions incorporat in the body of the right: And that the town-clerk shall keep a several book therefore, depending only upon the magistrats of the burgh, without necessity of any warrand from the clerk of register, and minut books of the same, to be quarterly compared and signed by the provest and bailies of the several burghs: It is alwaies declared, that it shall not be necessary to insert any bands or writs for making of reversions, unless seisings pass in favours of the parties, makers of the saids bands and writs: In the which case, it is ordained, that the same shall be insert within sixty dayes after the date of the seising, the extract out of the which register shall make faith in all cases, except where the writs so insert are offered to be improven: And if it shall happen any of the saids writs which are appointed to be insert as said is not to be duely insert within the said space of sixty dayes, then, and in that case, his Majesty, with advice and consent foressaid, decerns the same to make no faith in judgment, be way of action, or exception, in prejudice of a third partie, who hath acquired a perfect and lawful right to the saids tenements, but prejudice alwaies to them to use the saids writs against the parties makers thereof, their heirs and successours: And it is hereby declared, that there shall be nothing payed to the town-clerks for registration of the saids seisings, but for any posterioir extracts they shall have the halfe of the rates prescribed by the act of Parliament for extracts out of the registers of seisings in the particular shires; and for registering in the town's books of reversions, assignations thereto, or discharge thereof, renunciations, and grants of redemption of wodsets, which were not in use to be registrat before in the town's books, that they shall have the halfe of

the rates prescribed by the act of Parliament for registration and extracting the same, as said is.

The act of sederunt, 22. Feb. 1681, enjoins magistrates to see that these regulations be observed ; declaring, that the clerks and their cautioners shall be liable for the damages incurred through neglect. See also act 49. of Geo. III. *cap.* 42, and act 1693, *cap.* 14, quoted in the close of this title.

The act 1686, *cap.* 19, " anent registration of seisins and reversions," is in these terms :

Our Sovereign Lord considering, that where seisins and other writs and diligences appointed to be registrate are duly presented to the keepers of registers, it is their duty to cause carefully book and registrate the same for the security of the party and intimation of the lieges ; therefore, his Majesty, with advice and consent of his Estates of Parliament, statutes and ordains, that where seisins and other writs are presented to the keepers of registers, and delivered back to the party, bearing a record and attestation under their hand that the same are registrate, it shall make the same sufficient and valid for the security of the party, albeit by the omission or negligence of the keeper of the register, or his deputes, they should not be found booked or insert in the register ; and to the effect that all deputes intrusted with the care and keeping of the registers may faithfully do and execute their office, his Majesty, with advice and consent foresaid, statutes and ordains, that in case, by their omission or negligence, any writs presented to them, and marked with their hands to be registrate, shall not be found booked and insert in the register, the said deputes, guilty of such omission and negligence, shall be punishable as forgers of the publick registers and records, and shall be liable in damage and prejudice to any party who shall be pre-

judged by the said omission or negligence : And his Majesty, with advice foresaid, statutes, ordains, and declares, That these presents shall no ways derogate from the 16. act of the 22. Parl. King James VI., intituled, Act anent the registration of reversions, seisins, and other writs, which shall remain in its full force and strength in all points, as before the making of this present act.

Erskine, II. 3. 39.

DECISIONS.

Sir A. Mackenzie, 7. Feb. 1768, Mor. 8800.—Earl of Fife, 8. July 1774, *ib.* 8850.—Dunbar, 10. March 1790, *ib.* 8799.—Gray, 23. Feb. 1790, *ib.* 8796.—M^cQueen, 23. Jan. 1823, S. & D. II. 637.—Denniston, 16. Nov. 1824, *ib.* III. 285.—Dundas, 15. Dec. 1824, *ib.* III. 400.—Drummond, 24. June 1809, F. C.—Adam, 19. June 1810, F. C.—Magistrates of Edinburgh, 2. Feb. 1814, F. C.—Lord F. Campbell, 3. March 1795, Mor. 13140.—Davie, 2. June 1814.—Innes, 20. Dec. 1816.—Young, 20. Dec. 1749, Mor. App. No. 3. v. “*Registration.*”—Ballantyne, 15. Nov. 1750, *ib.* 13575.

II. RESIGNATIONS *AD REMANENTIAM*.

The act 1669, *cap.* 3, appoints a register for these instruments, to be kept nearly in the same manner with the register for seisins. It is as follows :

Our Sovereign Lord, with the advice of the Estates of Parliament, statuts and ordains, that all instruments of resignation that shall be made in the superiour hands *ad remanentiam*, (fourty dayes after the publication hereof,) be registrate within threescore dayes after the date thereof, in the same manner and way, and at the same rates, as renouncia-

tions, seisings, or reversions ; to the effect the lieges may the better know, that the infeftment which was granted to the resigners is thereby void and extinet, and that they may be put *in mala fide* to contract with the resigner thereanent, or to comprise the same from him, otherwayes the said resignation to be null : It is alwayes hereby declared, that the instruments of resignation of tenements, lands and fishings holden in free burgage, being registrate in the town-court books of the burgh, shall not fall within the certification of this present act.

Erskine, II. 7. 20.

III. CHARTERS FROM SUBJECT-SUPERIORS.

In the act 1693, *cap.* 35, passed chiefly to preserve the efficacy of procuratories of resignation and precepts of seisin, after the death of either granters or receivers, there is the following clause : “ And it is further
“ hereby declared, for the greater security of pur-
“ chasers and others, that charters granted by subal-
“ tern superiors may bear a clause of registration, as
“ well as dispositions ; and that, on the said clauses,
“ registration may follow, but only in the books of
“ Council and Session, and in no other record.”

IV. ENTAILS.

In the act 1685, *cap.* 22, there is the following provision :

It is always declared, that such tailzies shall only be allowed in which the foresaid irritant and resolute clauses are insert in the procuratories of resignation, charters, pre-

cepts, and instruments of seisin ; and the original tailzie once produced before the Lords of Session judicially, who are hereby ordained to interpose their authority thereto : And that a record be made in a particular register-book, to be kept for that effect, wherein shall be recorded the names of the maker of the tailzie, and of the heirs of tailzie, and the general designations of the lordships and baronies, and the provisions and conditions contained in the tailzie, with the foresaid irritant and resolute clauses subjoined thereto, to remain in the said register *ad perpetuam rei memoriam* : And for which record, there shall be payed to the clerk of register, and his deputes, the same dues as is payed for the registration of seisins, and which provisions and irritant clauses shall be repeated in all the subsequent conveyances of the said tailzied estate to any of the heirs of tailzie : And being so insert, his Majesty, with advice and consent foresaid, declares the same to be real and effectual, not only against the contraveeners and their heirs, but also against their creditors, comprisers, adjudgers, and other singular successors whatsoever, whether by legal or conventional titles.

See title "*Entail*."

V. SUMMONS TO INTERRUPT PRESCRIPTION.

The statute 1696, *cap.* 19, declares,

That in time coming, all summonses made use of for interruptions of prescription of real rights, shall pass upon a bill under the signet, and contain all the grounds and warrants upon which it proceeds, and that the summons and executions thereof, and all instruments of interruption, be registerate in a particular register, to be appointed by the Lord Register, to be kept at Edinburgh, within sixty days after the date of the execution and instrument of interruption, and that this registration be made in the same manner, and with

the same formalities in all points, as are ordained by former acts in the case of registration of seisins and inhibitions, and that this register of interruption be kept in books apart : declaring, That if the said interruptions shall not be duly registrate as above, the same shall be of no force nor effect for interrupting the prescription of real rights, as to purchasers and singular successors ; but prejudice to have the effect of an interruption, as to the persons against whom the same is execute, and instrument taken ; and allows the keeper of the said register to take payment for registering such summons, executions, and instruments, the half of the dues due for registering of hornings and inhibitions ; and declares all interruptions that shall be made *via facti*, for interrupting the prescription of real rights, shall have no effect as to purchasers and singular successors, unless an instrument be taken thereupon, and registrate in manner foresaid ; but the said interruptions *via facti* shall only be effectual as to the heritor and possessor of the ground, but no others. And his Majesty, with advice foresaid, ordains all summons, with their executions, or instruments already raised, or taken for interruption, as said is, to be registrate as above prescribed, within a year after the date of this act, under the same certification as is above expressed.

A modification of this act in favour of minors was introduced by the statute 1698, *cap.* 5, which is as follows :

Forasmuch as by the nineteenth act of the last session of this current Parliament, all summons and instruments of interruption of prescription, then raised and taken, were ordained to be recorded in a particular register to be appointed for that effect, and that within a year after the date of the said act, which was the ninth day of October 1696, his Majesty, with advice and consent of the Estates of Parliament,

does hereby declare, That the said year's space should not run against minors.

VI. ADJUDICATIONS.

The act 1661, *cap.* 91, is in these terms:

Our Sovereign Lord, with consent of the Estates of Parliament, considering that the registration of comprisings was only established by an act of secret council, and never authorized by any law or act of Parliament, and that the registration thereof did put the lieges to unnecessar charges, neither adding to the validity of the comprisings, nor to the benefit of the comprisers, hath therefore discharged, and by these presents discharges all registration of comprisings, with all gifts, acts of council, and other warrands and custome whatsoever, granted and observed at any time heretofore thereanent; and by thir presents ratifies and approves the custome observed these many years past, whereby, in place of the said registration, a short record of all comprisings of lands, teinds, and others, and of the comprisers' names and designations, the defenders' names, the debts for which the comprising is deduced, the messengers' and clerks' names, the date of the executions, the witnesses' names thereto, and of the superiors of whom the comprised lands are holden, hath been made in a book by the clerk of register and his deputies, at the allowing of the saids comprisings, (for which allowance and recording, there is only forty shillings Scots to be paid,) and which custome is very useful and necessar for information of the lieges. And therefore his Majesty, with advice and consent foresaid, ratifies and approves the foresaid custome, and ordains all comprisings formerly deduced and not allowed and recorded in manner above written, to be brought in to the clerk of register and his deputies, within threescore

dayes after the publication hereof; and all comprisings to be led and deduced hereafter, to be brought into the said clerk of register and his deputes, within threescore dayes after the date thereof. With certification, that if they be not allowed and recorded within the said space, any other comprising, though posterior in date, yet if it be allowed and recorded before the prior comprising, the same shall have preference according to the date of the allowance and record; but prejudice alwayes to any further diligence by inseftments, or charges against the superior, according to the priority or posteriority thereof, *prout de jure*.

By the 25th article of the regulations drawn up in November 1695, by parliamentary commissioners, for settling the court procedure, in place of all former provisions on the subject, it was ordered, that the Lord Ordinary shall sign an abbreviate of the decret of adjudication, bearing its true date, the names of the parties, and the amount of the debt; which abbreviate shall be registered within sixty days from the day of being signed in the books of the Bill-Chamber. By the statute 1. and 2. of Geo. IV. *cap.* 38, § 18, abbreviates must be signed by the extractor, and recorded within sixty days from their dates. See title "*Court of Session*," Vol. I. p. 304. See "*Parliamentary Regulations*," (in acts of sederunt,) 1695, § 24.—Acts of sederunt, 18. Jan. 1715, 2. Dec. 1742, and as to recording abbreviates, A. S. 10. July 1811.

VII. PROBATIVE WRITS.

The statute 1698, *cap.* 4, declares,

That it shall be lawful and leisume to registrate, for con-

servation, all charters granted by subjects, dispositions, bonds, contracts, tacks, reversions, and all other probative writs, in any publick authentic register that is competent, albeit the said writs want a clause of registration, and the principal to be given back to the party, and the extract to make entire faith in all cases, in the same manner as if the said writs had been registrate, by virtue of a clause of registration, except in the case of improbations.

Act of Sederunt, 10. July 1811.

VIII. HORNING.

The act 1579, *cap. 75*, “ for punishment of persons
“ that contemnandly remains rebels, and at the King’s
“ horn,” ordains,

That all letters of horning, execute and indorsat, or that sall happen to be execute and indorsat, befor the publication of this present act, sall, within the space of fiftene dayes, after the publication theirof, and in all time thereafter, within the space of fiftene dayes after the denuntiation, be brocht to the schireffe-clerk of everie schirefdome, quha sall registrate the same in the schireffes-buikes, and deliver the principall letters againe execute and indorsat, and noted on the back, registrate sik a day, and subscribed with his hand, within twenty-foure houres, after the receipt theirof, and sall receive fra the partie awner and presenter of the saidis letters for his labourers only sex schillings aucht pennies.

The quhilkes letters and executions theirof, swa registrate and subscribed on the back be the said schireffe-clerk, or the copie theirof authenticklie extracted foorth of the said schireffe buikes, subscribed be the said schireffe and clerk, sall be esteemed as authentick, and sall have effect and force in

quhatsumever judgment they happen to bee produced, ay and quhill the partie swa denounced to the horne obtaine himselfe ordourlie relaxed theirfra: quhilk relaxation sall alswa be maid publicklye at the mercat croce of the shire quhair he dwellis, and quhair the denuntiation of horning was maid: and that the said relaxation, and execution thereof, sall be likewise registrate in the said schireffes buikes within xv. dayes after the publication thereof at the mercat croce, and be alswa registrate and subscribed on the back in maner foirsaid, uthewise the saidis letters of horning and relaxations sall nowise bee halden lauchfullie and ordourlie execute, bot the executiones theirow null. And that all schireffes have honest famous men to their clerkes, quha be themselves, or their sufficient deputes, sall be halden to be alwaies resident within the head burgh of the schire, for receiving and registering of the saidis hornings and relaxations, as they sall occur, and sall do the same trewlye and ordourlye, within xxiv. houres, under the paine of payment of the damage and interest that the partie skaithed hapinis to susteine in their default, at the sight and modification of the Lordes of Councill and Session.

The act 1584, *cap.* 142, provides for the case of a horning at the instance of a "person deceased long before the making of the said act (1579, *cap.* 75,) "where the person denounced was also departed this "life before the making of the same:" and it declares,

That all letters of horning duly executed and indorsed for non-compearing to underlie the law, or for non-finding of sovertie to that effect reported to the justice-clerk and his deputes as use is, has been and shall be as sufficient as if the same were registered in the sheriffs books where the said rebels were denounced; and that it shall be sufficient, that the hornings within stewartries and regalities be registered within the books thereof, and that hornings

executed upon persons for their non-appearance to bear witness shall need no registration.

With regard to hornings, &c. against persons residing in bailleries, the act 1597, *cap.* 264, statutes and ordains,

That all letters of horning, relaxations, inhibitiones, interdictiones, and publicationes thereof, and utheris of the like sorte, that sall at any time hereafter bee raised, and execute against quhat-sum-ever person within this realme, dwell and within the baillaries or stewardries, alsweill of royaltie as regaltie, be execute at the mercat-croce of the head burgh or toun of the saidis baillaries and stewardries, within the quhilk the saidis persones dwellis: And als that the samin letters be registred in the saidis stewart and baillies buikes: quhilk registration sall be als lauchfull in all time cumming, as gif the samin had bene registred in the schireffes buikes: And that all executiones and registrationes, that sall happen hereafter to be utherwaies execute and registred, sall be null, and of nane availe, with all that followed thereupon: And ordainis all the generall clauses and provisiones insert and mentioned in the acts of Parliament, maid of before, anent registration of horninges, in the schireffes buikes, to be hal-den as expressed and repeted in this present ordinance and constitution.

The act 1597, *cap.* 265, requires, that hornings for registration be presented either judicially, or to the clerk in presence of a notary and four witnesses. But this was repealed by the subsequent statute 1600, *cap.* 13, which declares simple registration sufficient, and dispenses with any presentation judicially, or before a notary and witnesses.

ACTS OF SEDERUNT.

By A. S. 29. Feb. 1752, it is provided, that regalities being now abolished, hornings shall be published and executed at the market cross of any of the head burghs of the shire or stewartry within which the person dwells; and shall be recorded in the books of the shire or stewartry, in the same manner as formerly recorded in the books of regality.

By Act of Sederunt, 4. Jan. 1677, and 15. July 1692, the keepers of this record are ordered to make up their minute books regularly. See also A. S. 10. July 1811.

IX. INHIBITIONS.

The register for inhibitions and interdictions was established by the act 1581, *cap.* 119, which declares,

That all inhibitiones and interdictiones to be raised hereafter for quhatsumever cause, with the executiones and indorsationes thereof, be within forty dayes after the publication and execution of the saidis inhibitiones and interdictiones, produced first to the schireffe-clerke of the schire, quhair the persone interdicted or inhibit dwellis, and makis his residence: And gif the said persone have his landes and heritage, or the maist pairt thereof, lyand in ane uther schirefdome nor quhair he dwellis, that the person, at quhais instance the uther is interdicted or inhibite, produce the said interdiction and inhibition, dewely execute and indorsat to the clerke of the schire quhair the saidis lands lyes, within the samin forty dayes: Quhilkis letters of interdiction and inhibition, with the execution thereof, the saidis schireffe clerkes sall insert in their registers, takand for everie letter, with the executions thereof, five schillinges: Quhilk letter, with the execution thereof, they sall signe with their subscription, and deliver the samin swa signet to the partie,

within twenty-four houres, nixt after the receipt thereof: The extract of the quhilk register sall have as great faith and strength, as gif the originall wer schawin, except the parties havand interest to oppone against the saidis inhibitions and interdictiones offer to imprieve the samin, be way of action or exception: In the quhilk case, the pairtie purchaser of the saidis letters, and uthers havand interest to defend the samin, sall be halden to produce the principalles and originalles, notwithstanding that they be registrat, as said is: And that na interdiction or inhibition to be rayسد and executed hereafter, be of force, strength, or effect, to onie intention, bot the samin to be null and of nane avail, except the samin be dewlie registrat, as said is.

The provisions of the acts 1597, *cap.* 264, and 1600, *cap.* 13, above quoted, apply to inhibitions and interdictiones as well as to hornings.

See the above Acts of Sederunt applicable to hornings.

X. WRITS PASSING THE GREAT AND PRIVY SEALS.

The statute 1621, *cap.* 24, declares,

That in time comming, when any infestment, or other writ or evident, which passeth his Highness great seale shall be formed and written by the director of his Highness chancellary, or his deputies, the same, after the writing thereof, shall be delivered by them unto the party, in-giver of the said infestments, or others writtes foresaids, to the effect he may get his Highness great seale thereunto appended; at the delivery whereof, the party receiver of the same shall only be holden and astricted to pay at that time to the director of the chancellary, or his deputes, that one half of the prices allowed unto him by the book of rates for writing of evidents to the great seale: And that only in

consideration of the paines taken in forming and writing of the saids writs and evidents, without paying beforehand the other half of the saids prices, which hereby is appointed to be reserved unpaid, while the same be registrat in manner after mentioned. Which infestments and evidents being delivered to the keeper of the great seale, and he having appended the same seale thereunto, and being satisfied of the price due to him therefore, ordains the keeper of the great seale to return, and redeliver the same infestment, or other writ foresaid, so sealed by him, back again, to the director of his Highness chancellery, or his deputies; to the effect the same infestments, evidents, or other writs foresaids, may be registrated by him in the registers and books appointed for that effect. Which being so registrated, ordains the director of his Highness chancellery, and his deputies, to deliver the same to the party, he being satisfied of the other half of the price foresaid, retained by the party, and unpaid by him, at the time of the writing of the saids evidents to the great seale, as due for the registration thereof, in manner above written.

The statute 1679, *cap.* 7, “ concerning writs passing the great and privy seals,” declares,

That all charters, infestments, commissions, gifts, and other writs which hereafter shall pass under the great and privy seals, shall be registrat in the registers of the great and privy seals *respectively*, before the seall be appended to them: And the writers to these seals, who keep the registers thereof, are hereby ordained to registrat every writ passing their office, and, by their subscription, to mark the same on the back thereof, to be written and registrat by them, before they give them out to be sealed; and that they make and keep a perfect minut-book, containing the names, surnames and designations of the persons in whose favours the charters and other writs are granted, with the names of the lands and

special matters therein contained : And the keepers of these seals are hereby discharged to append the seals to any writs which are not so marked and attested to be registrat, as they will be answerable. And his Majesty further considering, that the writing of precepts of seasing, to pass under the quarter seal, is a great and unnecessary trouble to his subjects, and may be as well, and with less trouble supplied, if the precept of seasing were insert in the charter, doth therefore, with advice foresaid, suppress, and for ever discharge, the passing or writing of any precepts of seasing to, or under the quarter seal : And ordains, that, in lieu thereof, every charter shall, towards the end, contain a precept of seasing of all the lands and others contained therein ; which shall be als sufficient for taking of seassings, as if the same were past under the quarter seal as said is : Likeas, his Majesty, understanding the great trouble and inconveniencies occasioned by the writing of long charters and other writs, which pass the seals aforesaid in one broad parchment, of so great length and largeness, that they can hardly be read ; doth, for remeid thereof, with advice foresaid, statute and ordain, that it shall be free to any person, who hath any charter or writ to be written for the great or privy seals, to choice whether to have the same written in a broad skin of parchment as formerly, or to have them written by way of a book in leaves of parchment, about the breadth of an ordinary sheet of paper ; and accordingly, the writers to the great and privy seals are hereby ordained to write and exped the same : And, if they shall be written in the way of a book, that each page be signed and marked by them as said is. Which being done, the respective seals are to be appended thereto in manner following, viz. to such as shall be written on a skin of parchment in the ordinary way, that the seals be appended as formerly ; and to these which shall be written in the book-way, that the seals shall be appended upon a tye or band, which is to go thorow all the

leaves in the margine. And that for doing hereof, this shall be a sufficient warrand to all persons concerned.

ACT OF SEDERUNT.

A. S. 11. Feb. 1617, declares, that no signature or other writ, which passeth only the privy seal, and comes not to the great seal, be registered at the said privy seal until it be first sealed.

XI. RULE OF COMPETITION IN REAL RIGHTS.

The statute 1693, *cap.* 13, declares,

That all infeftments, whether of property, of annualrent, or other real rights, whereupon seisins for hereafter shall be taken, shall in all competitions be preferable, and preferred according to the date and priority of the registrations of the seisins, without respect to the distinctions of base and public infeftments, or of being cled with possession, or not cled with possession in all time coming.

GENERAL REGULATIONS AS TO THE RECORDS.

The act 1600, *cap.* 21, declares,

That all and whatsoever schireffes clerks in all tymes hereafter, shall present their registers to the clerks of register to be marked by him and his deputes. And whatsoever registration to be subscryved hereafter by them, upon whatsoever letters, together with whatsoever extracts shall be given forth thereof to any person, shall containe in all tyme comming the leafe wherein the samine is registrat, and this ordour to beginne from the first day of March

next; within the whilk, they and every ane of them shall present their saids registers to be sa marked. And that nane of them subscryve their registration upon any letter, or give forth any extract subscryved with their hand after the foresaid day, unspecifying the leaf wherein the samine is contened, with their booke, marked as said is, under the paine of an hundreth markes, *toties quoties*; but prejudice alwyse of the hornings whilks the saids clerk's omission, or neglect in this behalfe, shall nowyse make invalide.

The 32d section of the statute 1672, *cap.* 16, "cerning the session," is as follows:

That the keepers of the general registers of hornings and inhibitions, and of seassings and reversions; as also, the keepers of these registers in the several shires, in time coming, be careful to book all hornings, inhibitions, interdictions, seassings, reversions, and others registrat by them; and that they make exact minute-books relating to these registers, these of hornings, inhibitions, and interdictions, containing the names, sirnames and designations of the parties, principal and cautioners; and these of seassings, reversions and others appointed by the act of Parliament to be registrat in that register, containing the names and designations of the parties, and the common designation of the lordship, barrony or tennendry of the several lands mentioned in the writ; and that the clerk of register, or any whom he shall appoint, every quarter of the year, compare the minute-book with the general registers, and subscribe the minute-books at the collationing of the same; and in the several shires, that the sheriff, bailiff of the regality or royalty, or their deputies, (with whom any two of the justices of peace to be nominate by the whole meeting are allowed to be present,) be appointed quarterly, viz. upon the first Tuesdays of February, May, August and November, to call for, and take inspection of the said registers, and of the minute-books re-

lating thereto; and after collationing of the same, that they, with the saids two justices of the peace, if they be present, subscribe the minute-book; certifying the saids sheriffs and bailiffs, if they do not meet and compare the saids registers at the several times above specified, they shall be lyable in the penalty of one hundred pounds Scots for ilk failzie; and certifying the clerks, if they shall not have the books in readinesse at the aforesaid times, or if any hornings, inhibitions, seasings, reversions, and others foresaid then in their hands, shall not be registrat in the books, they shall incur the pain of deprivation, and be lyable in payment of the parties damage: and that the clerks, keepers of the saids registers, book all hornings, inhibitions, interdictions, seasings, reversions, and others which now are in their hands, for the space of fourty years bygone, and have exact minute-books relating thereto, in manner foresaid, within the space following, viz. the keepers of the general registers betwixt and the first of June 1674, and the keepers of the particular registers in the several shires, betwixt and the first of June 1673. And that all hornings and inhibitions, registrat in the shires, be marked by the keepers thereof, conform to the 21. act of the Parliament 1600, under the pains aforesaid; and that in the interim, betwixt the collationing of the books, the clerks shall be obliged to keep a privat minute-book for their own use, wherein they are to insert a note of all hornings, inhibitions, interdictions, seasings and reversions, as they are given in to be registrat: and in case any be omitted out of that minute-book, they shall incur the pain of deprivation, and be lyable to pay the parties damage. Whilk minute-books *respective* foresaid, as well for the space of fourty years bygone, as in time coming, the clerk shall be obliged to make patent to all his Majestie's lieges, whensoever they shall desire to see the same, upon payment of the dues following, viz. thirty shillings Scots for inspection of the minute-book of the general

register of seassings and reversions, and twenty shillings Scots for that of the general register of inhibitions; and for that of the general register of hornings, twelve shillings Scots; and for inspection of the minute-book of the particular register of seassings and reversions in the several shires, twelve shillings Scots; and for that of hornings and inhibitions, six shillings and eight pennies Scots money. And it is hereby declared, that the care of seeing the premisses done and performed, after the expiring of this commission, is committed to the Lords of Session.

The statute 1685, *cap.* 33, “ for security of the records,” ordains,

That all clerks within the kingdom, who keep such registers as are, or have been in use to be delivered into the clerk-register, to be preserved in his Majesty’s general register-house, shall give in all their registers and books preceeding the first of August 1675, before the first of November 1685, to be kept by the clerk of register; and that hereafter they shall keep only ten years’ records in their own hands for the use of the lieges; with certification, that these who failzie shall incur such pains and penalties as the Lords of Session shall think fit. And it is hereby declared, That no private grant made by any clerk register shall excuse them from obedience to this act, which tends so much to the security of the people, and preservation of the records.

The statute 1685, *cap.* 38, “ concerning the registration of writs in the books of session,” provides,

That there be only three offices of ordinary clerks of session in time coming, and that there be no more than two persons conjoyned in each of these offices, which shall remain entire in the full extent thereof, without alteration, division, or dismembration of any part of the same. And statutes and

declares, That they, as clerks to the session, and their successors, have the only right to be clerks as deputes to the Lord Register, to all processes which are competent before the Lords of Session, and to the registering and extracting of all writs registrate in the books of Council and Session, and have right to all privileges, profits and emoluments, whereof the said clerks are in possession : And for the better securing of the lieges, both as to the registration and preservation of principal writs, statutes and ordains, That the clerks of the session keep an exact register apart, in every one of their offices, for registration of all writs, and that they appoint one or two fit, diligent, and faithful persons in every office, to receive in the writs given in to be registrate, from whom they are to take caution for their registering, recording, and safe preserving of these writs. And appoints that there shall be two minute-books kept in every office ; in the one whereof, there shall be set down the title of writs given in to be registrate, the name of the giver in, and the date of the ingiving ; which is to be subscribed by the clerk, or his substitutes foresaid, and all writs so given in shall be booked within the space of one year after the ingiving ; and if any party, or one employed by him, shall desire up a writ given in, within the space of six months after its ingiving, then the title of the writ, the name of the said party, and the date of both ingiving and outgiving of the writ, shall be insert in the other minute-book, and be subscribed by the receiver thereof, that as the one minute-book doth charge, so the other minute book may discharge the clerk of such writs, and that no writ given in shall be taken out after the same is booked : And the clerks are to begin the foresaid method of the said two minute-books, from the first day of August next ensuing ; and when the time comes that these registers are to be given in to the general register-house, the two minute-books are likewise to be given in with them subscribed by the clerk ; and the depute appointed

by the Lord Register for keeping of the said registers shall subscribe other doubles of the said minute-books, which are to be kept by the clerks for information of the lieges in their offices. And the clerk of register, or his depute, are hereby ordained to keep all principal writs in a secure room, distinct from the room where the registers are kept; as also, further ordains the clerk of register once in the year to visit the registers in every chamber, as he shall be answerable. And because many writs are registrate incompetently outwith the jurisdiction, to the great prejudice of the lieges, (such registrations being void and null, and consequently all execution following thereupon,) therefore statutes and ordains, that no clerk of inferior court, for the future, presume to registrate any writs in his books, either for conservation, or where execution is to pass against any party that dwells without the jurisdiction, under the pain of deprivation, and of five hundred merks of penalty, the one half to his Majesty, and the other half to the party pursuer. Likeas, his Majesty, with consent foresaid, ratifies and approves the gifts granted by the clerk-register to the present ordinary clerks of session of their respective offices, in the whole heads, tenors, and contents of the same; declaring these presents to be as effectual as if the said gifts were *verbatim* here insert. And in respect that, by this act, there is a great addition to the clerk register his care and trouble, as well as to the people's security; therefore, it is ordained, That there shall be twenty shillings Scots paid to the clerk-register in place of the merk formerly paid to him and his predecessors for each subscription.

The statute 1698, *cap.* 14, proceeds thus :

Considering, that the many good acts appointing registers of seisins, reversions, hornings, inhibitions, interdictions, allowances of apprysings or adjudications, that purchasers and creditors might know with whom they might safely contract, have been much frustrated by the keepers

of the registers not inserting the same in the registers at the time, and in the order they were presented to them, whereby none could know, by inspection of the registers, what writs, appointed to be registrate, were in the hands of the keepers of the registers, and thereby could not securely bargain; for remedy whereof, their Majesties, with advice and consent of the Estates of Parliament, do statute and ordain, That all the keepers of the said registers shall keep minute-books of all writs presented to them to be registrate in their several registers, expressing the day and hour when, and the names and designations of the persons by whom the said writs shall be presented, and that the said minute be immediately signed by the presenter of the writ, and also by the keeper, and patent to all the lieges, who shall desire inspection of it *gratis*: And that the writs shall be registrate exactly, conform to the order of the said minute-book, all under the pain of deprivation of the keeper of the register. And further, their Majesties, with consent foresaid, declare the said keepers not observing the premises liable to the damage of the parties prejudged, by the not due observing of this present act.

The act 1693, *cap.* 15, "for summar registrations," &c. is as follows:

Our Sovereign Lord and Lady, the King and Queen's Majesties, with advice and consent of the Estates of Parliament, statute and declare, That all writs registrable may be registrate after the death of the creditor, at the instance of his heir, executor, or assigney, as well as of before; and that upon production of a service or retour, in the case of bonds or other writs heritable, or a confirmed testament, containing the bond or other writ, in case they be moveable, or of a special assignation, though not intimate in the case of either; which registration shall have the same effect, both as to probation and summar execution, as if the creditor were still on

life. And further, it is statute, That if it shall happen the pursuer to decease at any time during the dependence of any process raised at his instance, there shall be no need for hereafter, for his heir, executor, or assigney, to raise and obtain a transferring *active*; but the said heir, executor, or assigney, is hereby allowed, upon production of his service or retour, confirmed testament, or special assignation, though not intimate, to insist in the principal cause, siklike in all respects, as the pursuer, at whose instance the process was raised, might do, if he were still on life, but prejudice to transferrings *passive*, conform to the former practise, as accords.

The act 1696, *cap.* 18, declares,

That no seisin, or other writ or diligence appointed to be registrate, shall be of any force or effect against any but the granters and their heirs, unless it be duly booked and insert in the register; and that notwithstanding of any thing contrary hereto, contained in the nineteenth act, second session first Parliament King James the Seventh, which is hereby in so far rescinded, cased, and annulled, and declared to have no effect in time coming, but prejudice always to such as have registrate their seisins, and other writs and diligences, conform to the said act, before the making hereof. And his Majesty, with advice foresaid, ratifies and approves of the haill other heads and articles of the said act, and declares, That parties lesed by the omission or negligence of clerks to book and insert in the register such writs as are presented to them, and which they attest on the back to be registrate, shall have action of damage against the heirs and representatives of the said clerks, though no such actions be commenced in the clerk's lifetime.

The act 1696, *cap.* 39, " of registration of writs after the granter's decease," declares,

That all bonds, dispositions, assignments, contracts, and other writs registrable, may be registrate after the granter's death, siklike, and in the same manner, and shall make as much faith in judgment, and outwith the same, as if the said writs were registrate before the granter's decease, notwithstanding of whatsoever laws or customs in the contrary.

And the statute 49. of Geo. III. *cap.* 42, "for better regulating the public records of Scotland," is as follows :

"Whereas, irregularities and inconveniencies have arisen, or may arise, from the unnecessary multiplicity of registers in Scotland, in which deeds and other writings may be competently recorded, either for execution or for preservation : And whereas, the laws heretofore devised for regulating the formation and custody of the public records, and more especially of those in the local registries throughout Scotland, have not been found effectual ; and it is of high importance that the whole of the public records within that part of the united kingdom should be placed under one general and effectual plan of management and control : And whereas, by an act of the Parliament of Scotland, passed on the 13th day of June 1685, intituled, Act concerning the registration of writs in the books of session, it is, *inter alia*, statute and ordained, "That no clerk of inferior court for the future presume to registrate any writs in his books, either for conservation, or where execution is to pass against any party that dwells without the jurisdiction, under the pain of deprivation, and of 500 merks of penalty, the one half to his Majesty, and the other half to the party pursuer," which provisions of the aforesaid act, it has now become necessary to renew, modify, and enlarge ; may it therefore please your Majesty, that it may be enacted," and be it enacted, &c. That from and after the expiration of six months after the passing of this act, but with and under the exceptions and reservations

herein-after mentioned, it shall not be lawful for the clerks of royal burghs, or of burghs of regality or barony within Scotland, to receive any deeds or other writings, for the purpose of being recorded by them in the books or registers of their respective courts, either in virtue of an act of the Parliament of Scotland, passed on the 30th day of August in the year 1696, intituled, Act concerning registration of probative writs, or in virtue of any clause contained in such deeds and writings, consenting that the same should be recorded, either for preservation thereof, or for execution: Provided always, that this act shall not extend to, or affect the right of the clerks of royal burghs to receive instruments of protest on bills of exchange, inland bills, and promissory-notes, and to record the same: Provided also that this act shall not extend to or affect the right of the clerks of royal burghs to record in their books instruments of seisin, and other writs relative to heritable property, holding in burgage, and situated within their respective burghs, or liberties thereof, in virtue of an act of the Parliament of Scotland, passed on the 6th day of September in the year 1681, intituled, Act concerning the registration of seisions and reversions of tenements within burgh: Provided also, that this act shall not extend to or affect the right of the clerks of royal burghs to receive and record dispositions, tacks, and other deeds, relating exclusively to the property or possession of subjects holding in burgage, and situated within such burghs, or liberties thereof respectively, or any deeds or instruments where all the parties to the same shall be burgesses, or have a legal domicil within such burghs at the time that such deeds or instruments shall be presented for registration.

II. And be it further enacted, That from and after the expiration of six months after the passing of this act, it shall not be lawful for the clerks of the several commissary courts within Scotland to receive any deed or other writing for the

purpose of being recorded by them in the books or registers of their respective courts, either in virtue of the above-mentioned act of the Parliament of Scotland, passed on the 30th day of August in the year 1698, or in virtue of any clause contained in such deeds or writings consenting that the same should be recorded, either for preservation thereof, or for execution, or in virtue of an act of the Parliament of Scotland, passed on the 16th day of September in the year 1681, intituled, Act concerning bills of exchange, or of any acts of the Parliament of Great Britain, authorising the registration of bills and promissory-notes for the purpose of summary execution.

III. And be it further enacted, That if, after the date aforesaid, any of the clerks of royal burghs, or burghs of regality or barony, or any of the clerks of the commissary courts within Scotland, shall receive any of the above-mentioned deeds or writings, for the purposes of recording the same in their respective books or registers, or shall transcribe the same into their books, or shall give forth copies thereof, bearing to be extracts from their respective books or registers, excepting as above excepted, the aforesaid books, copies and extracts shall not make faith or be of any avail or authority whatever; and the aforesaid clerks, or others so offending, shall be liable in a penalty of five pounds for each offence, which may be sued for, and shall be recoverable for his own use, together with the expenses of process, by the sheriff-clerk or steward-clerk of the shire or stewartry within which such offence shall have been committed, in a summary complaint to the sheriff-depute or steward-depute of such shire or stewartry; and in default of such prosecution, at the instance of the sheriff-clerk or steward-clerk, within twelve months from the date of the commission of such offence, then such penalty shall and may be sued for and recovered, together with the expenses of process, by the Lord Clerk-Register, on a summary complaint presented within

three years after the date of such offence, to the Lords of Council and Session, such penalty in the latter case being solely applicable by the Lord Clerk-Register to the purposes of the establishment of his Majesty's General Register-House.

IV. V. VI. and VII. Clauses contain directions as to the manner of delivering up the records of the commissary court of Edinburgh to the Lord Clerk-Register, and the other commissary courts to the respective sheriff-clerks of the shires within which they are situated, and a penalty on any neglecting or refusing to deliver them up.

VIII. And be it further enacted, That from and after the expiration of six months after the passing of this act, it shall not be lawful for the sheriff-clerks or steward-clerks of the several shires and stewartries to use any books for the registration of deeds or other writings, unless the same shall have been previously marked, at least on the first and last leaves thereof, and issued to them by the Lord Clerk-Register or his deputies authorised to that effect, for each of which books there shall not be charged more than the primecost thereof, together with a fee to the deputy keepers of records not exceeding five shillings sterling; and if any sheriff-clerk or steward-clerk shall use any other books or registers than such as shall have been previously marked as aforesaid, and issued to him by the Lord Clerk-Register or his deputies, he shall be liable in a penalty of five pounds sterling for each offence, to be recoverable, together with expenses of process, by the Lord Clerk-Register, on a summary complaint, at his instance, to the Lords of Council and Session, (such penalty being in all cases solely applicable by the Lord Clerk-Register to the purposes of the establishment of his Majesty's General Register-House,) and shall further be bound and obliged again to record the same deeds and other writings, or books duly marked and issued to him as aforesaid.

IX. And be it further enacted, That from and after the

expiration of six months after the passing of this act, it shall not be lawful for the clerks of royal burghs to use any books, for the registration of instruments of seisin of subjects holding in burgage, or for the deeds and other instruments which they are hereby enabled to receive and record, unless such books shall have been previously marked and issued by the Lord Clerk-Register, or his deputies, in the manner above directed, and under the penalty above provided in the case of sheriff-clerks or steward-clerks as aforesaid.

X. And be it further enacted, That the sheriff-depute and steward-depute of the several shires and stewartries, or their substitutes, shall at least once in every year carefully examine into the progress and state of all the different records framed and kept by the respective sheriff-clerks and steward-clerks, and shall prepare exact reports in writing, setting forth the result of their examinations, and particularly specifying the state and situation of the buildings in which the records of their respective shires and stewartries are kept, and how far the laws and regulations relative to the several records have been faithfully and punctually executed and obeyed; and the sheriffs-depute of the several shires of Edinburgh, Haddington, and Linlithgow, or their substitutes respectively, shall, in the month of November in every year, present their said reports, duly authenticated, to the Lords Commissioners of Justiciary at Edinburgh; and the sheriffs-depute and stewards-depute of the other shires and stewartries, or their substitutes respectively, shall present their said reports, duly authenticated, to the Lords Commissioners of Justiciary, at the circuit courts that shall be holden within their respective bounds, in the autumn of every year; and the said Lords Commissioners of Justiciary are hereby empowered to make such orders thereon, or direct such further inquiries to be made, as may appear to them to be necessary, and direct their clerks to enter the same in the minutes of the court, and thereafter to transmit the several reports, with

a certified copy of the orders that may have been made by them thereon, to the Lord Clerk-Register, at whose instance it shall be competent to present to the Lords of Council and Session, summary complaints against any of the sheriff-clerks or stewart-clerks, or their deputies, on account of any neglect or malversation in the business of the several records committed to their care, and for redressing and punishing the same according to law.

XI. And be it further enacted, That the chief magistrates of the said royal burghs respectively shall, at least once in every year, carefully examine into the progress and state of all the different records framed and kept by the respective clerks of such royal burghs, and shall prepare exact reports in writing, in the manner above directed in the case of sheriff-clerks and stewart-clerks; and such chief magistrates shall, in the month of November in every year, transmit such reports to the Lords Commissioners of Justiciary at Edinburgh, who are hereby empowered to make orders, and direct inquiries, in the manner above provided, in the case of sheriff-clerks and stewart-clerks as aforesaid; and the clerks of justiciary shall, in like manner, transmit such reports, with a certified copy of such orders, to the Lord Clerk-Register, at whose instance summary complaints may be made against clerks of royal burghs, in the manner above directed in the case of sheriff-clerks and stewart-clerks as aforesaid.

“ XII. And whereas it is expedient that the transmission
“ of the successive volumes or books of the several public re-
“ cords, from the offices in which they are formed, to his
“ Majesty’s General Register-House, should be made with
“ the least possible delay :” Be it enacted, That within six
months after the passing of this act, the keepers of the several public records which are by law transmissible to his Majesty’s General Register-House, shall deliver all the volumes or books of their respective records that are already com-

pleted, together with the minute-books and the warrants thereof, to the Lord Clerk-Register or his deputies; and that in all time coming thereafter, the successive books or volumes of these records shall, in all cases, be delivered to the Lord Clerk-Register or his deputies, within three months after the same have been severally completed and filled up; and if the keepers of these records shall refuse or neglect to make such regular transmission of the successive books of their respective records, it shall be competent for the Lord Clerk-Register to present a summary application to the Lords of Council and Session, complaining of such refusal and neglect, by whom warrants shall be granted for issuing letters of horning against such keepers, in order to enforce obedience to this act, and by whom such further pains and penalties may be inflicted by fine, not exceeding fifty pounds, on such defaulters, as in the circumstances of the case shall seem just, to be applied by the Lord Clerk-Register to the purposes of the establishment of his Majesty's General Register-House.

XIII. "And for remedying the inconveniences that have arisen or may arise from the unnecessary multiplicity of writings and records now in use, as the successive warrants of charters and grants of lands and other heritable property, which pass under the seal appointed by the treaty of Union to be kept and used in Scotland in place of the Great Seal thereof formerly used there:" Be it enacted, That from and after the expiration of six months after the passing of this act, in expediting such charters and grants under the aforesaid seal, the Latin precept under the signet shall be so framed as to be carried directly to chancery without its containing any order that a precept under the privy seal shall be directed thereupon, and without such precept under the privy seal being made out or recorded; and such Latin precept under the signet shall from thenceforth be received by the director of his Majesty's chancery in Scot-

land, and by the keeper of the great seal, as the only legal and sufficient warrants to them respectively for framing grants in terms of the same, and for appending thereto the seal appointed by the treaty of Union to be kept and used in Scotland in place of the great seal thereof formerly used there.

XIV. Enacts compensation to be made to the writer to, and keeper of the privy seal, then in these offices, during their continuing to hold the same, and no longer.

XV. "And whereas it is of great importance that the record of writs passing under the great seal, and which is kept by the director of chancery, should be in all respects complete, authentic and authoritative; and that an act of sederunt touching that record was passed by the Lords of Council and Session, on the 11th day of February 1808, to which it is expedient to give the force and effect of a public law:" Be it enacted, That the keeper of the great seal, or his deputies, instead of delivering the sealed charters or other writs to the persons by whom these have been expedite, shall forthwith deliver the same, together with the warrants thereof, to the director of chancery or his deputy, by whom, after making the proper entries of the sealing in the record, the writs shall be delivered respectively to the persons by whom they shall have been expedite; and the aforesaid warrants shall remain in the possession of the director of chancery, until the same, together with the register in which the relative writs have been recorded, shall be transmitted to his Majesty's General Register-House.

XVI. And be it enacted, That extracts of writs from the register of the great seal, of which the fact and date of sealing shall have been duly recorded, (such extracts being certified in the form by the keepers of the said records,) shall make entire faith in all cases, excepting in cases of improbation.

XVII. and XVIII. Provide compensation to be made to

the clerks of royal burghs, and to the clerks of burghs of regality and of barony, and to commissaries and commissary clerks, and other keepers of records, for the loss of fees and emoluments, of which they will be deprived by the operation of this act.

ACTS OF SEDERUNT.

A. S. 6. Jan. 1604, The writer is liable in damages who fails to insert a clause of registration in seisins, reversions, &c.—A. S. 25. Nov. 1665, Writs bearing a clause of registration in the court books of justice may be recorded in the books of council and session.—A. S. 8. July 1819, for better preservation of the records of court.—A. S. 11. July 1826, as to depositing four volumes of records, found in the State Paper-Office, in the General Register-House, Edinburgh.

REGISTRY OF SHIPS.

The navigation and ship-registry laws do not properly fall under the plan of this work. And it is the less necessary to give a detailed account of them, as they are fully explained by Mr Hume, comptroller of customs at London, in his treatise on the Laws of the Customs.

The first Scottish statute on the subject is the act 1661, *cap.* 45, by which certain duties and forfeitures were imposed on foreign ships, while the trade of Scotland was confined to ships truly belonging to natives. An oath of ownership was directed to be taken, and a certificate granted, of which certificates a register was directed to be kept.

A consolidation of all former laws took place in the

year 1786 ; and the statute 26. of Geo. III. *cap.* 60, was passed for this purpose.

After a variety of amendments, another consolidation was effected by the act 4. of Geo. IV. *cap.* 41, which, however, was repealed by the statute 6. of Geo. IV. *cap.* 105, entitled, " An act to repeal several " acts relating to the customs," on occasion of the general reformation in the departments of excise and customs. And by the statute 6. of Geo. IV. *cap.* 109, " for the encouragement of British shipping and navigation," and *cap.* 110, " for the registering of British " vessels," which came into operation on 5th Jannary 1826, the whole system of registry was re-enacted.

Hume's Consolidated View of the Laws of Customs, p. 171 and 183.—Bell's Com. I. 153.

REMOVING OF TENANTS.

When it is intended to give tenants notice or warning to quit possession, agreeably to the statutory directions, the procedure will be regulated by the following acts of Parliament and sederunt :

The act 1546, *cap.* 3, is in these terms :

The quhilk day, the Lord Governour, and the three Estaites of Parliamente, ratifies and apprievis in this present Parliament the acte maid at Striviling, the elleventh day of Junij, the zeir of God ane thousand five hundredth fourty-sex zeires, maid anentis the laying furth of tennentes be their over-lordes, as at mair length is contained in the said acte,

of the whilk the tenour followis : The quhilk day the Lord Governour, with advise of the Queenis Grace and lordes of counsell, understandand that there is great convocationes maid in the realme for putting and laying of men furth of their tackes and steadinges, and siklike, to resist to the lordes of the ground, their baillies and officiares to lay them foorth, quhilk is the occasion of great trouble and slauchter amangst our Soveraine Ladies lieges ; therefore it is statute and ordained, that letters be direct to all schireffes, stewardest, baillies, and their deputes, and to uthers officiares of the Queenis, schireffes in that parte, to passe to the mercat croce of the head burrows of the schires, and there, be open proclamation, commande and charge all and sindrie our Soveraine Ladies lieges, of quhatsumever degree they be, that nane of them tak upon hand to make ony convocation for putting and laying furth of ony tennentes, bot that they, be their baillies and officiares, lay furth the saidis tennentes gudes orderly, conforme to the lawes of the realme, observed and keiped in times bygane ; nor zit that na maner of tennentes make ony convocation or gaddering, for resistance to their lords of the ground, their baillies and officiares, under the paines contained in the actes of Parliament maid against them that makis ony gadderinges or convocations ; with certification to them that dois in the contrair, that they sall be called at particular diets, and sall be punished therefore with all rigour, as accordis ; and gif ony person thinkis them offended be uthers, ordainis that they sall be called outhir criminally or civilly, and justice sall be ministred, as accordis.

The act 1555, *cap.* 39, “ anent the warning of tenants,” is as follows :

It is statute and ordained, that in all time cumming, the warning of all tennentes and uthers, to flit and remove fra lands, milnes, fishinges and possessiones quhat-sum-ever, sall be used in maner following ; that is to say, lauchfull



warning being maid ony time within the zeir, fourtie dayes before the feast of Whitsunday, outhir personally or at their dwelling places, and at the ground of the landes, and ane copie delivered to the wife or servandes, and failzieing thereof, to be affixed upon the zettes or dures of the dwelling places of the saidis landes, gif onie be, and thereafter the samin precept of warning to bee red in the paroch-kirk, quhair the landes lyis, upon ane Sabbboth daye before noone, the time of preaching or prayers; and ane copie left and affixed upon the maist patent dure of the kirk, fourtie dayes before the terme, and na furdre laying foorth of stresses, and remooveing upon Wednesday, to be used in time to cum. And gif the partie warned, in maner foresaid, removis not at the terme, in that case, the warner sall incontinent, or aa soone as pleasis him, cum to the lordes of counsell, or to the schireffe of the schire, or uthers judges ordinares havand jurisdiction, schawand his precept of warning, ordourlie execute and indorsate, and sall have letters or precept to charge the parties warned and possessoures of that ground to compeir before the saidis lordes, schireffes or their deputes, or uthers judges ordinares foresaidis havand jurisdiction, upon sex dayes warning, or langer, at the will and desire of the persewar, to heare and see them decerned to remoove, desist and cease, conforme to the precept of warning and execution thereof, or else to schaw ane reasonable cause quhy they suld not do the samin; with certification to them and they failzie, that letters sall be direct *simpliciter* upon them in the said mater: at the quhilk day, gif they compeir not, the lordes, schireffes, or uther judges ordinar havand jurisdiction, sall decerne them to remove, desist and cease fra the landes: and gif they compeir and instantlie schawis sufficient title to bruik the landes, in that case, the samin judge to proceede and do justice, as accordis of the lawe: and gif the partie compeiris and schawis na thing, bot makis alleageance, and offers him to improvee

the indorsation, in that case he sall not be heard in judgement, bot gif he finde sufficient caution to the warner then instantlie, that gif his allegiance being foundin relevant, be not sufficientlie verified and prooven be him, that the profits, damage, and interest, quhilkis the said warner, or ony uthers havand interest, has sustained, or sall happen to susteine, be the delay of the foresaide allegiance, be refounded to him : and to the effect that this ordour may have sufficient processe in all times to cum, it is devised, statute and ordained, that all schireffes, and uthers judges ordinar havand jurisdiction, as said is, be their selves, or their sufficient deputies, bee reddie to sit be fensed courtes, all the lauchfull fiteene dayes after immediatlie the feast of Trinitie Sunday, for doing of justice in the saidis causes, in maner abone specified : and gif the schireffes, or judges ordinares havand jurisdiction in maner foresaid, and their deputies, failzies to be reddie in granting of precepts, and doing of justice for observing of this ordour, in that case, they sall pay to the partie their haill damage, interesse and expenses, but prejudice of the action, against the violent occupiars and possessours foresaidis.

And als, that na advocation of causes be taken be the lords fra the judge ordinar, except it be for deadlie feede, or the schireffe principal, or the judge ordinar be partie, or the causes of the lords of counsell, and their advocates, scribes and members.

By the statutes 1690, *cap.* 39, and 1693, *cap.* 24, " anent removing from land," the term of Whitsunday is declared to be the fifteenth day of May yearly.

ACT OF SEDERUNT.

A. S. 14. Dec. 1756, is as follows :

Whereas the difficulties that have occurred in actions of removing from lands have been found to be highly pre-

judicial to agriculture, and both to masters and tenants, in respect that, during the dependence of such actions, the lands are neglected and deteriorated by the defender, and the heritor's security for his rent brought into danger; and tenants are discouraged from entering into tacks by the uncertainty of their attaining to possession, and by their finding the subject of their tack much deteriorated during the dependence of the process of removing against the preceding tenant: The Lords of Council and Session, resolving to remedy this great evil, do make the following regulations, viz.

I. That where a tenant is bound by his tack to remove without warning, at the issue or determination of his tack, it shall be lawful to the heritor, or other setter of the tack, upon such obligation, to obtain letters of horning, and thereupon to charge the tenant with horning forty days preceding the term of Whitsunday in the year in which his tack is to determine, or forty days preceding any other term of Whitsunday thereafter: And upon production of such tack, and horning duly executed, to the deputy-sheriff or steward, or their substitutes, of the shire or stewartry where the lands lie, they are hereby authorised and required, within six days after the term of removal appointed by the tack, to eject such tenant, and to deliver the possession void to the setter, or those having right from him.

II. Where the tenant hath not obliged himself to remove without warning, in such case it shall be lawful to the heritor, or other setter of the tack, in his option, either to use the order prescribed by the act of Parliament made in the year 1555, intituled, "Act anent the warning of tenants," and thereupon pursue a warning and ejection, or to bring his action of removing against the tenant before the judge ordinary: And such action being called before the judge ordinary, at least forty days before the term of Whitsunday, shall be held as equal to a warning execute in terms of the foresaid act; and the judge shall thereupon proceed to

determine in the removing in the terms of that act, in the same manner as if a warning had been executed in terms of the foresaid act of Parliament.

III. Where a tack is assigned, and the assignation not intimated by an instrument, or where the lands are subset in whole or in part to subtenants, such horning, execute as aforesaid, or where process of removing and decret is obtained, or where warning in terms of the act 1555 is used against the principal or original tacksman, the same shall be effectual against the assignees or subtenants, one or more; and the action of removing against the principal or original tacksman, and decret of removing following thereon, shall be effectual against such assignees and subtenants as aforesaid, and shall be sufficient ground of ejecting them, any thing in the former practice to the contrary notwithstanding.

IV. Where a tenant hath irritated his tack, by suffering two years' rent to be in arrear, it shall be lawful to the setter or heritor to declare the irritancy before the judge ordinary, and to insist in a summar removing before him: And it shall be lawful to the sheriff or steward depute, or their substitutes, to find the irritancy incurred, and to decern in the removing, any practice to the contrary notwithstanding.

V. Where a tenant shall run in arrear of one full year's rent, or shall desert his possession and leave it unlaboured at the usual time of labouring, in these, or either of these cases, it shall be lawful to the heritor, or other setter of the lands, to bring his action against the tenant before the judge ordinary, who is hereby empowered and required to decern and ordain the tenant to find caution for the arrears, and for payment of the rent for the five crops following, or during the currency of the tack, if the tack is of shorter endurance than five years, within a certain time to be limited by the judge; and failing thereof, to decern the tenant summarily to remove, and to eject him in the same manner as if the

tack were determined, and the tenant had been legally warned in terms of the foresaid act 1555.

VI. The Lords hereby enact and declare, That no bill of advocation, or suspension of a decret or process of removing, be passed otherwise than by three Lords in time of vacance, and by the whole Lords in presence in the time of Session: Provided always, That in vacation time, and where three Lords cannot easily be found, it shall be lawful to the Lord Ordinary on the Bills, upon such bills of suspension, to grant sists from time to time as he shall judge proper, to the end that the complainer may have access to present his bill of suspension to three Lords, or to the Court. And they hereby ordain, that upon passing such bill of advocation or suspension, or at least within ten days after the date of the deliverance thereon, the complainer shall be bound to find sufficient caution, not only for implement of what shall be decerned on the advocation or suspension, upon discussing thereof, but also for damage and expense, in case the same shall be found due: And upon the complainer's failing to find caution as aforesaid, such bill of advocation or suspension shall be held to be refused, and it shall be lawful for the other party to proceed in his action of removing, or in the execution of his decret, as if no such bill of advocation or suspension had been presented or passed.

VII. The Lords do enact and declare, That in all removings, whether originally brought before this court, or by advocation or suspension, they will proceed and determine the same summarily, without abridging the course of any roll: And ordain this act of sederunt to be recorded in the books of sederunt, and printed and published in the usual form.

Bell on Leases, II. 51.—Erskine, II. 6. 45.

DECISIONS.

Urquhart, 24. May 1824, F. C. — Campbell, Dec. 1762,

Mor. 13867.—Macdonald, 25. Nov. 1825, S. & D. IV. 227.—Keith, 3. Dec. 1825, *ib.* IV. 267.—Blair, 18. Jan. 1826, *ib.* IV. 365.—Brodie, 7. Feb. 1777, Mor. App. No. 3. *v.* “*Tack.*”—Duke of Queensberry, 7. July 1810, F. C.—Thomson, 13. Dec. 1818, F. C.—Brown, 27. Feb. 1822, Shaw, I. 359.—Heron, 28. June 1825, *ib.* IV. 118.—Earl of Eglinton, 24. Jan. 1771, Mor. p. 13886.—Campbell, 1. March 1793, *ib.* 13849.—Gordon, 25. Feb. 1783, *ib.* 13859.

REPRESENTATION IN HERITAGE. See APPARENT HEIRS, Vol. I. p. 50.

REPRESENTATION ON THE PASSIVE TITLES.

The passive title of vicious intromission is held to be incurred by those who assume possession of the moveable property of a person deceased, without confirmation.

This is fixed by the statute 1696, *cap.* 20, which is in the following terms :

Our Sovereign Lord, considering, That many times the nearest of kin and others doth intromet with the moveables of persons deceast, without confirmation, and embezzles the said moveables in defraud of lawful creditors; and when they come to be pursued at the instance of any of the creditors for being liable to the defunct's debt, as vitious intrometters, they ordinarily defend themselves with this pretence,

that there is an executor-creditor confirmed before the intenting of the action; whereas, a third party confirming executor-creditor in a particular subject ought not to free the intrometter from the passive title of vitious intromission, when the intrometter has no right from the executor-creditor: Therefore, for obviating such frauds in time coming, his Majesty, with advice and consent of the Estates of Parliament, statutes, ordains, and declares, That the nearest of kin, and others intrometters with the moveables of any defunct, who are not executors confirmed to them, nor have right from the executor-creditor before his intromission, are and shall be liable as vitious intrometters, notwithstanding that there is a third party confirmed executor in a particular debt or subject.

Act of Sederunt, 23. Feb. 1692.

Erskine, III. 9. 49.

DECISIONS.

Richan, 13. June 1752, Mor. 7682. — Penman, 15. Dec. 1775, *ib.* 9836. — Wilson, 19. June 1772, *ib.* 9833. — Ritchie, 7. March 1795, *ib.* 9838. — Gardiner, 10. Dec. 1802, *ib.* 9840. — Scott, 25. May 1821. — Forbes, 12. June 1823. — Brown, 25. Feb. 1824. — Barbour, 19. Nov. 1824. — Wallace, 21. Dec. 1826.

RIOT ACT.

The statute 1. of Geo. I. *cap.* 5, is in the following terms :

Whereas of late many rebellious riots and tumults have

been in divers parts of this kingdom, to the disturbance of the public peace, and endangering of his Majesty's person and government; and the same are yet continued and fomented by persons disaffected to his Majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters, his Majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his Majesty: Therefore, for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the authority of the same, That if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year of our Lord One thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any city or town-corporate, where such assembly shall be, by proclamation to be made in the King's name, in the form herein after directed, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made,) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, That then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, and the offenders

therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy.

And be it further enacted, by the authority aforesaid, That the order and form of the proclamations that shall be made by the authority of this act shall be as hereafter followeth, (that is to say,) the justice of the peace, or other person authorised by this act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded silence to be, while proclamation is making; and after that, shall openly and with loud voice make, or cause to be made, proclamation in these words, or like in effect :

Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.

God save the King.

And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head-officer aforesaid, within the limits of their respective jurisdictions, are hereby authorised, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make, or cause to be made proclamation in manner aforesaid.

And be it further enacted by the authority aforesaid, That if such persons, so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together and not disperse themselves within one hour, that then it shall and may be lawful to, and for every justice of the peace,

sheriff or under-sheriff of the county where such assembly shall be ; and also to and for every high or petty constable, and other peace officer within such county, and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town-corporate where such assembly shall be ; and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff, or under-sheriff, mayor, bailiff, or other head officer aforesaid, (who are hereby authorised and empowered to command all his Majestie's subjects of age and ability to be assisting to them therein,) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majestie's justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law ; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the King's Majesty, his heirs and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt, as aforesaid.

And be it further enacted, by the authority aforesaid, That if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace, shall unlawfully and with force demolish, or pull down, or begin to demolish, or pull down any church or chapel, or any building for religious worship, certified and registered according to the statute made in the first year of the reign of the late King William and Queen Mary, intituled, An act for exempting their Majesty's Protestant subjects dissenting from the Church of England, from the penalties of certain laws, or any dwelling-house, barn, stable, or other out-house, That then every such demolishing, or pulling down, or beginning to demolish, or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy.

Provided always, and be it further enacted by the authority aforesaid, That if any person or persons do, or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person or persons that shall begin to proclaim, or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy; and that also every such person and persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered, as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so

made, having knowledge of such lett or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy.

And be it further enacted by the authority aforesaid, That if, after the said last day of July 1715, any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously, and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, shall be out of any city or town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done shall be liable to yield damages to the person or persons injured and damnified by such demolishing or pulling down wholly, or in part; and such damages shall and may be recovered by action to be brought in any of his Majesty's courts of record at Westminster, (wherein no essoign, protection, or wager of law, or any imparlance shall be allowed,) by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar, or curate of such church or chapel that shall be so damnified, in trust, for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied: And in case any

such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house, so damnified, shall be in any city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid, (wherein no essoin, protection, or wager of law, or any imparlance shall be allowed,) against two or more inhabitants of such city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town, at any quarter-sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied.

And be it further enacted by the authority aforesaid, That this act shall be openly read at every quarter-sessions, and at every leet or law day.

Provided always, That no person or persons shall be prosecuted by virtue of this act for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed.

And be it further enacted by the authority aforesaid, That the sheriffs and their deputies, stewarts and their deputies, bailies of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty constables, or other peace-officers of any county, stewardry, city, or town, within that part of

Great Britain called Scotland, shall have the same powers ~~and authority~~ for putting this present act in execution within Scotland, as the justices of the peace and other magistrates aforesaid respectively have, by virtue of this act, within, and for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any the offences afore-mentioned, within that part of Great Britain called Scotland, shall, for every such offence, incur and suffer the pain of death, and confiscation of moveables: And also, that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or out-house, which shall be demolished or pulled down, in whole, or in part, within Scotland, by any persons unlawfully, riotously, or tumultuously assembled, shall, and may be recovered by summar action, at the instance of the party aggrieved, his or her heirs or executors, against the county, stewartry, city, or borough, respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head borough of such county or stewartry respectively, and that in general, without mentioning their names and designations.

Provided, and it is hereby declared, That this act shall extend to all places for religious worship, in that part of Great Britain called Scotland, which are tolerated by law, and where his Majesty King George, the Prince and Princess of Wales, and their issue, are prayed for in express words.

By the statute 57. of Geo. III. *cap.* 19, § 38, it is declared, that in every case where any house, shop, or other building whatever, or any part thereof, shall be destroyed, or shall be in any manner damaged or in-

jured, or where any fixtures thereto attached, or any furniture, goods, or commodities whatever which shall be therein, shall be destroyed, taken away or damaged, by the act or acts of any riotous or tumultuous assembly of persons, or by the act of any person engaged in or making part of such assembly, the inhabitants of the city, town, or hundred, shall be liable to pay the damages, as in the case of riots under the statute 1. of Geo. I.

Hume, I. 429.

RUNRIG. See COMMONTY.

SALMON FISHING. See FISHERY.

SAVINGS' BANKS.

The statute 59. of Geo. III. *cap.* 62, " for the protection of banks for savings in Scotland," declares,

That if any number of persons shall be desirous of having the benefit of the provisions of this act, and shall have formed or shall form any institution in any part of Scotland, for the purpose of receiving deposits of money for the benefit of the persons depositing the same, and of returning the whole or any part of such deposit, and the produce thereof, to the depositors themselves, or to their heirs, executors, assignees, or other persons entitled thereto under the provisions of this

act, deducting only out of such produce so much as shall be requisite for the payment and discharge of the necessary expenses attending the management of such institution, according to such rules, orders and regulations as shall or may be established for that purpose; such persons shall cause the rules, orders and regulations, established or to be established for the management of such institution, to be entered, recorded, and deposited in manner herein-after directed, and thereupon shall be deemed to be entitled to, and shall have the benefit of the provisions contained in this act.

II. Provided always, and be it further enacted, That no such institution as aforesaid shall have the benefit of this act, unless a written or printed copy of the rules, orders and regulations for the management thereof, signed by two of the managers of such institution, shall be exhibited to the justices of the peace assembled at the quarter sessions of the peace for the shire or stewartry within which such institution shall be situated; which rules, orders and regulations shall be subject to the review of such justices, who shall and may, after due examination thereof, annul and make void such part of the same as shall be repugnant to this act, and shall allow and confirm the same, or such part thereof as shall be conformable to the true intent and meaning of this act; and after the confirmation as aforesaid of the rules, orders and regulations of such institution, the same shall be signed by the clerk of the said justices attesting their approbation thereof; for which attestation, and all the expense and labour attending the same, the said clerk shall be entitled to charge the sum of ten shillings and sixpence, and no more; and such rules, orders and regulations so attested, shall be deposited with the clerk of the said justices, who is hereby specially required to receive and preserve the same among other the records in his custody, and to grant an attested copy of the same to the person or persons by whom the same

shall have been exhibited, without any fee or reward to be paid in respect thereof; which rules, orders and regulations so attested, shall be entered in a book or books, to be kept for that purpose by such institution; provided that nothing herein contained shall extend to prevent any alteration in or amendment of any such rules, orders and regulations, deposited as aforesaid, or to the repealing or annulling of the same, or any of them, in whole or in part, or to the making of any new rules, orders or regulations for the management of any such institution, in such manner as shall be directed by the rules, orders and regulations thereof; provided such new rules, orders and regulations, or such alterations or amendments shall be entered in the book or books of the said institution kept as aforesaid; and a written or a printed copy thereof shall be exhibited, approved of, attested and deposited as aforesaid, before the same shall be put in force.

III. Provided also, and be it further enacted, That the persons depositing money with any institution, taking the benefit of this act, or their heirs, executors, or other persons entitled thereto, under the provisions of this act, shall have the sole benefit of such deposits, and the produce thereof, in the manner provided by the said rules, orders, and regulations; save only and except such salaries and allowances, or other necessary expenses, as shall, according to such rules, orders, and regulations, be specified for conducting such institution, and for remuneration to clerks and servants employed in the management thereof, exclusive of the trustee or trustees, and other persons having control and direction in the management of such institution, who shall not, directly or indirectly, have any salary, allowance, profit, or benefit whatsoever therefrom, on account of such control and direction, beyond the actual expenses for the purposes of such institution.

IV. And be it further enacted, That all rules, orders and regulations, from time to time made and in force for the management of any institution taking the benefit of this act, and

duly exhibited, entered, approved of, attested and deposited as aforesaid, shall be binding on the several members and trustees of such institution, and the several depositors therein, and their representatives, and persons entitled as aforesaid, under the provisions of this act, all of whom shall be deemed and taken to have full notice thereof, by the entry and deposit aforesaid, and all such rules, orders, and regulations as aforesaid, or a certified copy thereof, under the hands of the clerk of the said justices, shall be received as evidence in all cases; and such clerk shall be bound to furnish such copies to all concerned, without fee or reward, except the actual expense of making such copy, at the rate of sixpence for each and every sheet thereof, containing at least two hundred words; and neither such copy, nor any receipt or acknowledgment granted to any depositor or depositors, at the time of making any deposit in any institution taking the benefit of this act, or granted by any such depositor or depositors, or their heirs, executors, or other persons entitled as aforesaid, under the provisions of this act, at the time of drawing out his, her, or their share, or shares in the funds of the institution, or any part thereof, shall be subject to or chargeable with any stamp-duty whatever.

V. And be it further enacted, That all money, goods, and effects whatever, and all securities for money or other obligatory instruments, and all rights or claims belonging to any institution taking the benefit of this act, shall be vested in such person or persons as shall be appointed by the rules, orders, and regulations of the institution, trustee or trustees for the time being, for the use and benefit of such institution, and the respective depositors therein, and the heirs, executors, or persons entitled under the provisions of this act, according to their respective claims and interests; and after the death, resignation, or removal of any such trustee or trustees, the same shall vest in their successors in office, by virtue of their appointment as such, and for the same uses and purposes, and subject to the same trusts, without any

assignment or conveyance whatever; and such trustee or trustees shall and may, in all cases concerning the property, rights, or claims aforesaid of such institution, sue and be sued in their proper name or names, as trustee or trustees of such institution, without any other description; and no such action or cause shall be discontinued by the death of such person or persons, or by his or their removal from the office of trustee or trustees, or against the succeeding trustee or trustees as aforesaid; but the same shall and may be proceeded in by the succeeding trustee or trustees as aforesaid, any law, usage, or custom to the contrary notwithstanding; declaring always, that no securities for money or other obligatory instruments belonging to, or granted for or in respect of any such institution, and no proceedings in any action or cause touching or concerning the property, rights, or claims of any such institution, shall be subject to, or chargeable with any stamp-duty whatever; and that no advertisement in any newspaper, relative to any such institution, shall be chargeable with any duty to government.

VI. And be it further enacted, That if the rules and regulations of any institution taking the benefit of this act, shall require any bond, obligation, or security to be given to the trustees or managers, by the treasurer or any other officer of such institution, such bond, or other security, or any extract thereof, or any power of attorney relative thereto, shall not be charged or chargeable with any stamp-duty whatever.

VII. And be it further enacted, That if any person entitled to money in any institution taking the benefit of this act, shall be desirous of bequeathing his or her share or interest therein, or any part thereof, he or she shall effectually carry his or her intention into execution, by subscribing any holograph writing expressive of such intention, and if not holograph, but in the handwriting of some other person, then by subscribing thereto his or her name, or by ad-

hibiting thereto his or her mark, in the presence of two credible witnesses, by whom also such writing shall be subscribed as witnesses; and the trustee or trustees, and all other persons appointed, or to be appointed by the rules, orders and regulations of any such institution, and in virtue of such appointment, having control and direction in the management of the funds thereof, are hereby specially required to give full effect to every such writing holograph, or so subscribed and witnessed as aforesaid, by paying or otherwise disposing of any such share or interest as aforesaid, or any part thereof, thereby bequeathed, in the manner therein directed, and by taking for the same the receipt or discharge of the person or persons entitled to such bequest, without any confirmation being obtained from the commissary court, provided the amount does not exceed the sum of twenty pounds; and upon confirmation being obtained from the commissary court when the sum shall exceed twenty pounds, in the manner directed by an act passed in the forty-fourth year of the reign of his present Majesty, intitled, An act to repeal the several duties under the commissioners for managing the duties upon stamped vellum, parchment and paper, in Great Britain, and to grant new and additional duties in lieu thereof; provided always, that no stamp-duty or legacy-duty shall be charged for, or in respect of any receipt granted for any sum bequeathed by any such writing as aforesaid, where the amount shall not exceed fifty pounds.

VIII. And be it further enacted, That in case any person entitled to any sum of money deposited with any institution taking the benefit of this act, shall die, leaving any sum or sums of money deposited with such institution, or any dividends or interest due thereon, belonging to him or her at the time of his or her death, and not disposed of as aforesaid, and in case no settlement thereof shall be exhibited to the managers of such institution within six calendar months after the decease of any such person, nor any claim

made by any person or persons showing a better title thereto, the same shall be paid over to such representative or representatives of such person so dying, as shall be entitled thereto by the ordinary rules of law regulating succession in Scotland; and that without any confirmation being obtained from the commissary court, provided the amount does not exceed the sum of twenty pounds.

IX. And be it further enacted, That in all cases not provided for by the rules and regulations of any institution taking the benefit of this act, where any matter of dispute shall arise among the managers, or other members as aforesaid, of any such institution, or of any persons acting under them, and any individual depositor therein, or any executor, administrator, next of kin, or creditor of any deceased depositor, or any person claiming to be such executor, administrator, next of kin, or creditor, then and in such case such matter of dispute shall be submitted to the sheriff or steward, or his substitute, of the shire or stewartry within which such institution is situated, for his decision, whereupon the said sheriff or steward, or his substitute, shall be bound to decide forthwith, and his decision shall be final and conclusive, and binding on all parties, and in no case whatever shall it be competent to bring such decision under the review of any court of law whatever, by appeal, suspension, advocacy, reduction, or any other form of process; and no bond, receipt or discharge, for or in respect of any sum of money paid upon such reference, or in consequence of such decision, shall be subject to, or chargeable with any stamp-duty whatever.

SCHOOLS.

There are a great many statutes of the Scottish Par-
VOL. II. X

liament, respecting the establishment and support of parochial schools. But as they are now wholly superseded by a recent statute, it is not necessary to quote them fully.

The act 1567, *cap.* 11, provides, that teachers of youth should be tried by visitors of the kirk.

The act 1567, *cap.* 12, allows bursaries, for encouraging learning; amended by the act 1592, *cap.* 158. —See also 1594, *cap.* 223,—1633, *cap.* 5,—1662, *cap.* 4,—1690, *cap.* 17,—1693, *cap.* 22,—1693, *cap.* 41,—1696, *cap.* 14 and 26, and 1706, *cap.* 6.

The statute 43. of Geo. III. *cap.* 54, “ for making
“ better provision for the parochial schoolmasters, and
“ for making further regulations for the better govern-
“ ment of the parish schools in Scotland,” is in the following terms :

“ Whereas the parish schoolmasters in Scotland are a
“ most useful body of men, and their labours have been of
“ essential importance to the public welfare; and whereas,
“ by an act passed in the Parliament of Scotland in the reign
“ of King William the Third, in the year 1696, intituled,
“ Act for settling of schools, it is, *inter alia*, statuted and or-
“ dained, that there be a school settled and established, and
“ a schoolmaster appointed, in every parish not already pro-
“ vided, by advice of the heritors and minister of the parish;
“ and for that effect, that the heritors in every parish meet
“ and provide a commodious house for a school, and settle
“ and modify a salary to a schoolmaster, which shall not be
“ under one hundred merks, nor above two hundred merks
“ Scots, to be paid yearly, at two terms, Whitsunday and Mar-
“ tinmas, by equal portions; and certain rules and regula-
“ tions were laid down by the said act, relative to the ap-
“ portioning and payment of the said salary by the heritors

“ of the parish : And whereas the highest salary by the said
“ act granted, amounting only to L. 11 : 2 : 2½ sterling,
“ which by difference in the value of money, and change in
“ the circumstances of the country, has become a provision
“ altogether inadequate for a body of men whose labours are
“ of so great public utility :” May it therefore please your
Majesty that it may be enacted, and be it enacted, That from
and after the term of Martinmas next, the salary of each pa-
rochial schoolmaster in every parish of Scotland shall not
be under the sum of three hundred merks Scots *per annum*,
nor above the sum of four hundred merks *per annum*, except
in the cases herein-after mentioned.

II. And be it further enacted, That within three months
after the passing of this act, the heritors possessed of the qua-
lification required by this act, and the minister of every pa-
rish, shall hold a meeting, of which intimation shall be given
from the pulpit immediately after divine service in the fore-
noon, and by circular letters to be written by the minister of
the parish to such heritors having the qualification prescrib-
ed by this act, who are non-resident, and also by leaving a
written notice at the mansion-house of every heritor, whether
resident or not, at least thirty free days before such meeting
shall take place ; and on due consideration of the circum-
stances of the particular parish, in respect of extent, popu-
lation, and valued rent, and the probable amount of the other
emoluments of the schoolmaster’s office, such meeting shall
judge and determine whether the schoolmaster’s salary shall
be three hundred merks Scots *per annum*, or four hundred
merks Scots *per annum*, or such sum between these two sums
as to such meeting shall seem most suitable to the circum-
stances of the parish, and shall fix and determine the amount
of the schoolmaster’s salary, to be paid to the schoolmaster,
by a resolution to be made at such meeting, a copy of which
resolution, signed by the preses of the meeting, shall be de-
livered to the schoolmaster of the parish as his authority for

collecting and receiving the salary thereby fixed and determined, which shall be paid by the several heritors at the same terms, apportioned among them, in the same manner, and with the same relief against their tenants, as is provided by the aforesaid act of the Parliament of Scotland passed in the year 1696: Provided always, that no salary at present payable to any schoolmaster shall be diminished; and in all cases where any such salary, or any part thereof, is payable in grain or meal, such salary in grain or meal shall continue to be paid, and payable in the same manner as heretofore, with such additions thereto in money as to such meeting shall seem proper; and in fixing and determining the amount of the salary to be paid pursuant to this act, such grain or meal making part of such salary shall be estimated at the rate of two hundred merks *per* chalder.

III. And be it enacted, That the salaries so fixed and determined in manner above directed shall continue to be the salaries payable to the schoolmaster of every parish for and during the period of twenty-five years from the passing of this act; and within three years after the expiration of twenty-five years from the passing of this act, the sheriff or steward of every county or stewartry shall fix and determine, according to the average amount of the fiars of the county or stewartry for the twenty-five years preceding, what is the value or average price of a chalder of oatmeal, and he shall make a return of such average to the office of King's Remembrancer in Exchequer in Scotland; and the Lord Chief Baron and Barons of Exchequer are hereby empowered and required, from such returns by the sheriffs and stewards of Scotland, to strike the average price of a chalder of oatmeal for all Scotland; and an order of the said Court of Exchequer fixing such average, shall, within three months from the date of the last return by the sheriffs and stewards, be published by the King's Remembrancer in the Edinburgh Gazette, and such other Scots newspaper as he shall deem sufficient, for

three successive weeks, and a copy thereof shall also be transmitted by the said remembrancer to the sheriff or steward-clerk of every shire or stewartry in Scotland ; which average so ascertained shall be the rate according to which the schoolmaster's salary shall be fixed in the manner herein-after directed ; and the sheriff or steward clerk shall transmit a certificate thereof signed by him, to the minister of each parish within the county or stewartry, to be by him submitted to the meeting directed to be called in manner immediately after mentioned.

IV. And be it further enacted, That within three months after the date of such certificate, the heritors possessed of the qualifications required by this act, and the minister of every parish in Scotland, shall hold a meeting, of which, intimation shall be given from the pulpit immediately after divine service in the forenoon, and by circular letters, to be written by the minister of the parish to such heritors having the qualification prescribed by this act, who are non-resident, and also by leaving a written notice at the mansion-house of every heritor, whether resident or not, at least thirty free days before such meeting shall take place ; and on due consideration of the circumstances of the particular parish, in respect of extent, population, and valued rent, such meeting shall judge and determine whether the schoolmaster's salary of the same shall be equal to the average price of one chalder and a half, or of two chalders of oatmeal, according to the amount thereof ascertained by the aforesaid certificate, or to such proportion between them as to such meeting shall seem most suitable to the circumstances of the parish, and shall fix and determine the amount of the schoolmaster's salary to be paid pursuant to such average, and their resolution thereupon ; a copy of which resolution, signed by the preses of the meeting, shall be delivered to the schoolmaster of the parish as his authority for collecting and receiving the salary thereby fixed and determined, which shall be paid to him by the several heritors at the same terms apportioned among them, in

the same manner, and with the same relief against their tenants, as is provided by the aforesaid act of the Parliament of Scotland in the year 1696.

V. Provided always, and be it enacted, That in case the heritors and minister shall neglect or refuse to determine the amount of the salary to be paid to the schoolmaster according to the provisions of the act, or in case any heritor, or the schoolmaster, shall be dissatisfied with the determination made, it shall be competent, within three months after such meeting ought to have been held, or such determination shall have been made, for the schoolmaster to apply, or for such person so dissatisfied to appeal to the next quarter session held for the shire or stewartry within the bounds of which the parish or parish-kirk lies, whose judgment shall be final, and no appeal by advocation, suspension, or otherwise, shall be admitted against the judgment at such quarter sessions : Provided always, that no heritor of the parish from whence such appeal comes shall vote upon such appeal at such quarter sessions.

VI. Provided always, and be it enacted, That after twenty-five years shall have elapsed from the time the amount of a schoolmaster's salary shall have been so fixed, the sheriff of a shire, or steward of a stewartry shall, within three months, again determine the average price of a chalders of oatmeal in the manner directed by this act, and shall, as above directed, return the same to the office of King's Remembrancer in Exchequer ; and the Lord Chief Baron, and Barons of Exchequer, shall again, by an order of court, fix the average price for all Scotland ; and the King's Remembrancer shall again transmit a copy of said order of court to the sheriff or steward clerk of each shire or stewartry, and the said sheriff or steward clerk shall again publish the same in the Edinburgh Gazette and Scots newspapers, and transmit a certificate of said average and order of court to the minister of each parish within his shire or stewartry, and the heritors and minister shall again fix and determine the schoolmas-

ter's salary according to such average, such salary never being less than the value of one chalder and an half, nor more than two chalders for the next twenty-five years, and so *toties quoties* at the end of every twenty-five years for ever, unless altered by Parliament; and every such determination of salary shall be liable to appeal to the quarter sessions, in manner and to the effect above mentioned.

VII. Provided always, and be it enacted, That in every parish where there is only one heritor qualified as herein after prescribed, such heritor shall have two votes at every meeting directed to be held pursuant to this act; and in all meetings where no preses has been chosen, the heritor present possessed of the highest valuation shall have the casting vote.

VIII. And be it further enacted, That in every parish where a commodious house for a school has not already been provided, pursuant to the directions in the above-recited act, and in every parish where a dwelling-house for the residence of the schoolmaster has not already been provided, together with a portion of ground for a garden to the extent hereafter mentioned, the heritors of every such parish shall provide a commodious house for a school, and also a house for the residence of the schoolmaster, such house not consisting of more than two apartments, including the kitchen, together with a portion of ground for a garden to such dwelling-house, from fields used for the ordinary purposes of agriculture or pasturage, as near and convenient to the schoolmaster's dwelling-house as reasonably may be; which garden shall contain at least one-fourth part of a Scotch acre, and shall be inclosed with such fence as is generally used for such purposes in the district of the country where it is situated; and the expense of providing such school-house, dwelling-house, and garden, and supporting the same, shall be defrayed and paid in the same and like manner as is prescribed for providing a house for a school by the aforesaid act of the Parlia-

ment of Scotland : Providing always, that where the heritors shall determine that such garden cannot be allotted to the schoolmaster without great loss and inconvenience, it shall be optional to them, with the authority of the quarter sessions of the county or stewartry, to assign to the schoolmaster, in lieu of such garden, an addition to his salary, at the rate of eight bolls of oatmeal *per* acre, to be computed according to the average ascertained in manner herein-before directed.

IX. And be it further enacted, That in case the heritors shall neglect or refuse the accommodations of house, school-house and garden, or additional salary in lieu thereof, to schoolmasters, according to the provisions of this act, or in case the schoolmaster shall not be satisfied with the accommodations allotted him, it shall be competent for him to bring the same, by representation or petition, before the quarter sessions, held for the shire or stewartry to which the parish of which he is schoolmaster belongs, or in which the parish-kirk is situated, and in all such cases the judgment of the quarter sessions shall be final, without any further appeal by advocacy, suspension, or otherwise : Provided always, that no justice of peace who shall be an heritor in the parish of such schoolmaster shall vote upon such representation or petition.

X. Provided always, and be it enacted, That the heritor or heritors from whose estates any ground shall be taken for the purpose of such school-house, dwelling-house and garden, shall have his, her, or their relief against the other heritors of the parish for the value of the ground so to be taken, in proportion to the valued rent of the lands belonging to the whole heritors in the parish ; such relief to be settled only by the sheriff or stewart of the county or stewartry, without appeal by advocacy, suspension, or otherwise.

XI. And be it enacted, That in case of those parishes which consist of districts detached from each other by the

sea or arms of the sea or otherwise, as where a parish consists of two or more islands, of which there are several instances in the Highlands, North Isles, and Hebrides, or where it is otherwise of great extent and population, so that one parochial school cannot be of any effectual benefit to the whole inhabitants of such parishes, it shall be competent to the heritors and minister, if they shall see cause, on fixing a salary of six hundred merks, or the value of three chalders of oatmeal, to be computed according to the provisions of this act, to divide the same among two or more teachers, according to the extent or population of the parish ; and these proportions, so divided, shall be paid to teachers of schools, in the same way and manner, and under the same conditions, as hereafter are specified by this act, for supplying vacant parochial schools with masters ; but in respect that the heritors of such parishes are to pay an higher salary, they are hereby exempted from the obligation of providing school-houses, dwelling-houses, and gardens for the teachers among whom the salary is to be divided in the manner foresaid ; and in case a difference of opinion shall arise among the heritors respecting the propriety and usefulness of such division of the salary, the same shall be submitted, by petition or representation, to the quarter session of the shire or stewartry within the bounds of which the parish or parish-kirk is situated ; and the judgment thus obtained shall be final, without appeal by advocacy, suspension, or otherwise.

XII. Provided always, and be it enacted, That none of the provisions of this act shall apply to the case of a parish, which consists only of a royal burgh, or part of a royal burgh.

XIII. And be it further declared, That where a parish consists of a royal burgh, or part of a royal burgh, and a landward heritor or heritors, the schoolmaster shall be appointed and maintained by the burgh, or by the landward heritor or heritors, or by the burgh and landward heritor or heritors, in the same way and manner, and according to

the same proportions that have hitherto been observed in such parish; the salary and accommodations being always equal in value to those provided by this act, and the same remedy being allowed in case they are otherwise, and to be applied for in the manner already specially pointed out; and provided any addition shall be granted, the same shall be paid in the same proportions by the parties from whom the present salary is received.

XIV. And be it enacted, That from and after the passing of this act, in case of vacancy in the office of schoolmaster, by death or otherwise, the minister of the parish shall, within fifteen days, intimate, or cause to be intimated from the pulpit, immediately after divine service in the forenoon, the vacancy which has taken place, and communicate the knowledge of the same, by letter, to such heritor or heritors as may be non-resident; and the heritors possessed of the qualification required by this act, with the minister of the parish, are hereby appointed to hold a meeting, of which intimation shall be given by the minister, by edictal citation and circular letters, to such as are non-resident, at least thirty free days before it takes place; and such meeting, or adjourned meeting shall elect a person to the vacant office of schoolmaster; and in the event of the parish being vacant, the presbytery shall appoint some one of their number to make the intimations, and give the notices, which, according to the provisions of this act, the minister is required to do.

XV. Provided always, and be it enacted, That if the heritors qualified as is hereby required, and minister, shall fail to elect a schoolmaster within four calendar months from the time the vacancy shall have taken place, then the presbytery, within the bounds of which the parish is situated, shall apply to the convener of the commissioners of supply of the county or stewartry, who, or any five of them, at a meeting to be called by the convener upon thirty days' notice, shall have

power, *jure devoluto*, and are hereby directed, to elect a person to supply the vacancy.

XVI. And be it further enacted, That every schoolmaster elected under the provisions of this act shall carry the minutes, or an extract or certified copy of the minute of his election to the presbytery, accompanied with attestations of his having taken the oath to his Majesty before any one of his Majesty's justices of the peace, and the presbytery shall thereupon take trial of his sufficiency for the office, in respect of morality and religion, and of such branches of literature, as, by the majority of heritors and minister, shall be deemed most necessary and important for the parish, by examination of the presentee, by certificates and recommendations in his favour, by their own personal inquiry, or otherwise, and shall see him sign the Confession of Faith and Formula of the Church of Scotland; and their judgment or determination as to the qualification of such presentee for the office of schoolmaster shall not be reviewed or suspended by any court, civil or ecclesiastical; and provided they are satisfied with the same, he shall be furnished with an extract from their minutes, bearing that he had appeared, produced the attestations required, and had been found, on trial, duly qualified for discharging the duties of the office to which he had been elected, which extract shall complete his right to the emoluments provided by this act.

XVII. Provided always, That in case the person elected is not found duly qualified, the heritors and minister shall only be allowed what remained of the four months at the time of his election, with so many days more as required by this act.

XVIII. And be it further enacted, That the heritors qualified as hereby required, and minister, in a meeting called on thirty days' notice from the pulpit, and by letter from the minister to the non-resident heritors, and by notice to be left at the mansion-house of each heritor, whether resident or

not, shall have the power of fixing the school fees from time to time, as they shall judge expedient ; and a table of such fees, signed by the preses of the meeting, shall be hung up in the school-room : Provided always, that the schoolmaster shall be obliged to teach such poor children of the parish as shall be recommended by the heritors and minister at any parochial meeting.

XIX. And be it enacted, That the superintendence of schools shall continue with the ministers of the established church, as heretofore, according to the several acts of Parliament respecting the same, except in so far as is altered by this act.

XX. And be it enacted, That as often as presbyteries, in the course of their visitation, shall find any thing wrong with respect to the hours of teaching, or the length of the vacation annually given, or when any complaint shall be made to them upon those subjects by parties concerned, they shall have the power of regulating the same in the manner they may judge most consistent with the particular circumstances and general good of the parish ; and the schoolmaster is hereby required to conform to and obey all regulations so made by the presbytery, under pain of censure or suspension from or deprivation of his office, as to the presbytery shall seem proper.

XXI. And be it enacted, That when any complaint from the heritors, minister, or elders, against a schoolmaster, charging him with neglect of duty, either from engaging in other occupations, or from any other cause, or with immoral conduct, or cruel and improper treatment of the scholars under his charge, shall be presented to the presbytery, they shall forthwith take cognisance of the same, serve him with a libel, if the articles alleged appear to them to be of a nature which requires it, and having taken the necessary proof, they shall acquit or pass sentence of censure, suspension, or de-

privation, as shall appear to them proper upon the result of such investigation; which judgment shall be final without appeal to, or review by any court, civil or ecclesiastical; and in case they shall depose the incumbent from the office of schoolmaster, his right to the emoluments and accommodations of the same shall cease from the time of his deposition, and in case he shall fail or refuse to remove from the school-house and garden within three months from the date of such sentence or deposition, the sheriff, upon an extract or certified copy of the sentence by the presbytery laid before him, shall grant letters of ejection against such schoolmaster, of which no bill of advocation, suspension, nor action of reduction, shall be competent; and the school shall thereupon be declared vacant, and the election of another schoolmaster take place.

XXII. Provided always, That it shall not be lawful for any heritor, who is not a proprietor of lands within the parish, to the extent of at least L.100 Scots of valued rent, appearing in the land-tax books of the county within which such parish is situated, to attend or vote at any meeting pursuant to this act; but every heritor so qualified may vote by proxy, or by letter under his hand.

XXIII. All former acts respecting parish-schools ratified and confirmed in so far as not expressly altered.

Erskine, I. 5. 24.—Act of Privy Council, 10. Dec. 1616.

DECISIONS.

Anderson, 26. Nov. 1808, F. C.—Dawson, 18. Feb. 1809, *ib.*—Heritors of Corstorphine, 10. March 1812, *ib.*

SEDITION. See TREASON.

SEQUESTRATION. See BANKRUPT.

SHERIFF.

A sheriff-depute is a magistrate appointed by the crown to judge and dispose of all actions, civil and criminal, not falling under the jurisdiction of a supreme court, within a certain district of country. Long before this, among other heritable jurisdictions, had been abolished, the sheriff exercised very ample powers as judge-ordinary of the bounds. This appears from the early statutes.

The act 1426, *cap.* 90, bearing, that “ the man-
“ slayer should be pursued until he be put forth of the
“ realm, or brought again to the place of the slaugh-
“ ter,” is to the following purpose :

In the first, quhair onie man beis slaine within the realme, alsweil within regaltie as within royaltie, and in burrowes as to land, that incontinent without delay, als fast as the schireffe beis certified thereof, outhir be the partie, or be onie utheris, he sall passe and persew the slayers, ane or maa, and raise the kingis horne on them, and raise incontinent the countrie in his supporte, quhill he be over-tane. And gif he may be over-tane, he sall be put in sicker fastenance quhill the law be done on him : And that sall be done with-

in fourtie daies at the farthest ; and be it reid hand, it sall be done within that sun. And gif he escape out of that schireffedome un-arreisted, the schireffe sall write or send ane of his officiares to the schireffe of that nixt schireffdome, and certifie him of sik men, that hes done sik felonie against the king, and ar fugitive fra the law, and then sall that schireffe persew him or them out-throuch his schireffedome, in the samin manner, as the other did before, without delay. And swa foorth fra schireffe to schireffe, quhill he be over-tane, or put out of the realme. And gif he happenis to flie in regalitie, out of the royaltie, the schireffe sall certifie the lord of regalitie, or his stewart or baillie, the quhilk sall persew the trespassour in like manner as the schireffe, as is foresaid. And quhair-ever he happenis to be takin, that schireffe, stewart or baillie of the regalitie, sall send him to the schireffe or his baillie of the nixt schireffedome, the quhilk sall receive him, and send him to the nixt schireffe, and swa foorth fra schireffe to schireffe, quhill he be put to the schireffe of the schire quhair the deede was done, and there sall the law be ministred to the partie, as is foresaid : And gif it before-thocht felonie, he sall die therefore.

According to the act 1426, *cap.* 91, “ he who is fugitive for slaughter should be openly proclaimed, and “ his receipters punished.” It proceeds thus :

And gif it happenis the man fugitive to escape throw diverse schireffedomes, that schireffe or schireffes, that he hes escaped fra, sall passe to the chiefe burgh of his schireffedome, and there gar cry openlie and proclaime, that sik a man hes done to the king sik a felonie and trespassse against his Majestie, and is fugitive fra the law ; and there forbid that na man house nor herberie him, receipt him, or give him support or helpe in onie degree, under the paine of life and gudes.

The act 1487, *cap.* 100, is as follows :

Item, it is thocht expedient, statute and ordained, that the actes of Parliament maid of before, anent the punition of slauchter, be put to execution, with this addition, that quhair ony person committis slauchter, and cummis not incontinent to the schireffe to binde him to the law, and finde sovertie therefore, after the forme of the actes of Parliament maid of before, bot beis fugitive and absentis him, the schireffe sall then foorthwith, be him or his deputes, search and seeke the committer of the said slauchter at his dwelling-place, if he hes ony ; and if he hes nane, and cannot be personally apprehended, then the schireffe sall put his gudes under arreist, and passe or send his depute to the head burgh of the schire quhair the slauchter is committed, and be open proclamation at the mercat-croce, warne and charge the slayer, ane or maa, as they be, that they cum to him within sex daies nixt after, and finde sovertie to compeir and underly the law at a certaine day, under the panes contained in the actes of Parliament maid of before ; the quhilkis sex dayes beand runnin, and the persones not compeirand and findand sovertie as said is, then the schireffe incontinent to put them to the horne, and denunce them the King's rebelles, and take and escheit their gudes ; and make warning to the nixt schireffe, that sik persones ar put to the horne be him, and charge him in our Soveraine Lordis name to do the samin, or els take and arreist their persones, gif they may be apprehended, and bring them to the law.

In act 1487, *cap.* 101, declares as follows :

It is thought expedient, statute and ordained, for the punition and justifieing of sik trespassours as hes bene in times by-gane, after that they were taken and arreisted be the crowners, and in default that they could finde na borrowes, nor there was no castell to receive and keepe them in, quhill the justice aire, and their-throw escaiped and was

put fra the law ; that therefore in time to cum, quhair onie crowner arreistis and takis sik trespassoures, he sall bring them to the schireffe of the schire, quhilk schireffe sall receive them, and keepe them in suretie and firmance on our Sovereine Lordis expenses quhair it failzies of their awin gudes, quhill the nixt justice aire, and then presente them to the justice. The quhilk schireffe sall have allowed to him in the checker, for the expenses that he makis in the keeping of thay persones that beis delivered to him be the crowner, for ilk person three pennies on the day, he bring- and a testimonial to the checker fra the justice under his seale, of the persones that he bringis to the justice aire, and how lang time, and quhat dayes he keiped them. Upon the quhillk time and daies the justice sall take certification and prooffe in the aire, quhat time the crowner delivered them, and how lang the schireffe keiped them. And gif the schireffe refusis to receive the person or persones that sall be brocht to him be the crowner as said is, he sall underly the danger and unlaw of the justice aire to the fourt court, as ane borgh suld do, for fault of entrie of a person arreisted, the crowner prievand that he brocht sik persones to the schireffe, and required him to receive them as said is.

By the statute 1487, *cap.* 103, it is ordained, “ that
 “ there be charge given to the justice, that he, in time
 “ to come, the last day of his aire, give an assize to
 “ the sheriff and crowner, if they have used and done
 “ their office truly : and if they be convicted and found
 “ false therein, that they be punished therefor after the
 “ form of law and their demerits.”

The act 1491, *cap.* 28, “ anent man-slayers taken
 “ or fugitive, and of demembration,” is as follows :

Item, It is statute, that quhair ony man happenis to be
 slaine or demembred within the realm, alsweil within rega-

litie as within royaltie, and in burgh as to land, then incontinent without delay, als hastely as the schireffe or steward, baillie or officiar of regalitie can be certified thereof, outhere be partie compleinzieand, or ony uther way, he sall passe and persew the slayers or dememberers, ane or maa, and raise the Kingis horne on him, and raise the cuntrie incontinent in support, quhill he be over-tane. And gif he may be gotten, he sall incontinent bring him to the King or his justice, or els keip him in sicker suretie, quhill the King be certified of him, and have answer, quhat he sall do thereto be our sovaine lord or his justice at his will, or how soone it pleaseth him, notwithstanding the fourtie daies, or the three sunnes contained in the auld lawes: the partie follow-and beand present or warned to be there, gif he will persew the action. And gif it happenis the saidis trespassors till eschew out of the schireffedome unarreisted or taken, then the schireffe sall write or send ane of his officers to the schireffe of the nixt schirefdome, and certifie him of sik men that hes done sik fellonie against the King, and ar fugitive fra the lawes. And then sall he first persew him or them out-throw the schireffedome in the samin maner, as the other did of before without delay. And swa foorth fra schireffe to schireffe, quhill he be over-tane, or put out of the realme. And gif he happenis to flie in the regalitie out of the royaltie, the schireffe sall incontinent certifie the lorde of the regalitie, his stewarde or baillie, the quhilk sall persew the trespassoures in like manner as the schireffe dois, as is before said. And quhair-ever he happenis to be over-tane, that the schireffe, stewarde, or baillies of the regalties sall incontinent sende him to the schireffe or baillie of the nixt schireffedome, quhilk sall receive him, and send him to the nixt schireffe; and sa foorth fra schireffe to schireffe, quhill he be put to the schireffe of the schire quhair the deed was done; and there sall justice be incontinent done, as is before said. And gif it be fore-thought fellonie, to die

therefore. And gif the saidis schiriffes or officiares beis foundin culpable herein, and he have the office of heretage, he sall tine it for three zeires ; and gif he hes it for termes, to tine it for ever mair ; and to abide and underly ane assise, quhiddir he be culpable or not.

The act 1592, *cap.* 124, is in the following terms :

For remeid of the great contempt, disordour and wrang, quhilk hes bene in diverse partes of this realme, in default of keeping and execution of the gude lawes and actes of Parliament maid of before, be the schireffes, and uthers judges ordinar, their deputes and clerkes : It is statute and ordained, be our Soveraine Lord, with advice of his Estaites in Parliament, that the saidis schireffes and uthers judges ordinar, alsweill to burgh as to land, within regalitie as royaltie, do their exact diligence to knaw and understand the lawes of this realme and actes of Parliament, quhairof the execution is committed to their charge ; and that they put the samin in execution without delay, after the end of this present Parliament, speciallie in searching, seeking, following, persewing, apprehending, committing to waird, and presenting to justice of declared traitoures and rebelles, contemnandlie remaining at the horne, and standand registrate in their awin buikes unrelaxed, or in doing of justice upon them, gif they have commission to that effect ; and gif they cannot apprehend the saidis traitours and rebelles, within the bounds of their awin jurisdiction, to make denunciation to the schireffes and judges ordinar of the foure halves about, that sik persons ar fled within their bounds, requiring them to use the like diligence in searching and apprehension of them, as they will answeare to his Majestie, at their perrell, and under the same paine, that the traitoures or rebelles hes incurred. In inquiring, searching and apprehending of sornares, oppressoures, strang vagaboundes, and beggares, wandring athort the realme, on

pretense that they ar schip-broken or banished for slaughter or uther odious offenses, or ar of the dissimulat thiefes and abusers calling themselves Ægyptians. In execution of justice, in all civil causes belanging to their judgement, without partialitie or needles delayes. In extracting of processes, decreets, and giving of seasinges and retoures, at reasonable prices, without exorbitant extorsion. In bringing of their court-buikes, with the compt of escheittes and un-lawes, intrometted with be them zeirlie to the checker. In making of their deputes and clerkes of men of best fame, knowledge, understanding and experience, that may and can use the office, quha sall be astricted to bring their registers of seasinges, horninges and registrationes, to the checker, and his Hienes thesaurer, as is conteined and ordained in the actes of Parliament maid there-anent of before. And that the saidis schireffes, and uther ordinar judges, may the better execute and do their dewtie in the premisses, our Sovereine Lord, with advise of his Estaites in this present Parliament, ratifies and apprievis all liberties, priviledges, registrationes, fees, and commodities, granted to them, their deputes and clerkes, be his Hienes, or his progenitours of before, they alwaies findand gud sovertie, in his Hienes nixt checker, for dischargeing of their office dewtifullie, and making of their compts zeirlie in the checker, at the diettes apoynted thereto; and that they sall nawaies suffer themselves to be denounced to the horne in default thereof; but that they sall send their deputes, ane or man, and clerk zeirlie at the first day of November, to be examinat and admitted, be the Lords of Councill and Session, under pecunial paines, at the Lordes modification, to be paid be them, to our Sovereine Lordis use, in case of failzie, with certification to them, that gif the said sovertie be not found betuixt and the end of the nixt checker, they sall be denounced rebelles, and put to the horne; and thence furth, all his Hienes subjects, within their jurisdictions, sall be excoemed

fra their offices and jurisdiction: and attour declaris and ordainis all precepts furth of the chancellarie upon retoures to be past in the auld maner to the schireffe and utheris judges ordinar, with the clause, *capiendo securitatem*, unurgand the partie with present payment, in case the said sovertie be found as said is.

The act 1661, *cap.* 29, "for poinding upon sheriffs' and commissary decreets," declares,

That albeit, by act of Parliament, of the date the ninth of July 1606 years, letters of horning are ordained to be directed by deliverance of our Lords of Session upon sheriffs, commissars, and other inferiour judicatories their decreets, upon the simple charge therein mentioned; yet the act bears no warrant for letters of poynding to be granted by the deliverance foresaid upon these decreets; whereby the parties interessed, obtainers of the decreets, are oftentimes prejudged of their payment, when these parties, against whom these decreets are obtained, do flit or remove out of the shire or jurisdiction of the judge before whom the saids decreets are given: Therefore his Majesty, with advice of the saids Estates, ratifies the act of Parliament above mentioned, in the whole heads and points thereof: and for remedy of the prejudice foresaid, ordains letters of poynding to be direct, by deliverance of the Lords of Session, at the instance of the parties interessed, upon the saids sheriffs, commissars, and other inferiour judges their decreets contained in the foresaid act, sicklike, and in the same manner as letters of horning are appointed by the said act to pass upon the same decreets, that thereby the parties may have real execution as well as personal upon their decreets foresaid. Likeas, his Majesty, with advice and consent foresaid, declares, that all execution of poynding, legally used upon the saids decreets since the twelfth of June 1649 years, shall be valid and sufficient; and the parties, messengers and others, exe-

cutors and users thereof, shall never be questioned, nor any process sustained against them therefore, either civilly or criminally, before any judge whatsoever; but prejudice alwayes to parties against whom poynding have been used, upon reduceable or unwarrantable sentences, to pursue repetition as accords of the law.

The statute 20. of Geo. II. *cap.* 43, contains the following provisions :

That there shall be but one sheriff-depute, or stewart-depute, in every county, shire, or stewartry in Scotland, not hereby taken away or abrogated, and that he shall be an advocate of three years standing at the least, and shall, during the space of seven years from the said 25th day of March, be nominated and appointed by his Majesty, his heirs, or successors, by warrant under his or their sign manual, with such continuance as his Majesty, his heirs or successors shall think fit; and that after the end of the said seven years, the offices of sheriff-depute and stewart-depute shall be granted and held *ad vitam aut culpam* only, with competent salaries, to be ascertained and established for the time of their continuance; and that every such sheriff-depute or stewart-depute shall have power to nominate and appoint one or more person or persons to act as substitute or substitutes under him throughout the whole county, shire, or stewartry, or within such parishes or districts thereof as shall be expressed in the commission of such substitute or substitutes during his pleasure, for whom he shall be answerable; and such substitute and substitutes are hereby required to take and subscribe openly, in such sheriff's or stewart's courts respectively, the oaths appointed by law to be taken by persons in offices of public trust, to be there recorded, before he or they enter upon his or their office or offices; and that it shall and may be lawful for all sheriffs-depute and stewarts-depute, and their substitutes, to hold their courts at any

time in the year, as well during the vacation of the Court of Session, as during the sitting thereof, without any dispensation from the said court ; any law, custom, or usage to the contrary in any wise notwithstanding ; and that it shall and may be lawful for the said sheriffs-depute or stewarts-depute, not only to hold the stated courts at their head boroughs, but also to hold itinerant courts, at such times and places, within their respective jurisdictions, as they shall judge to be expedient, or at such times and places as they shall be directed or ordered by his Majesty, his heirs, or successors, by warrant under his or their sign manual ; which sheriffs-depute or stewarts-depute are hereby required to cause notice to be given, within a reasonable time, before such itinerant courts shall be held ; which notice they shall cause to be published at the several parish churches within the district for which the same are to be so held ; and that every such sheriff-depute and stewart-depute shall be and reside personally within his county, shire, or stewartry, during the space of four months at least in the year ; and that it shall not be lawful for any sheriff-depute or stewart-depute to advise, plead, or otherwise act as an advocate before any of the King's Courts at Edinburgh, or at the circuit courts, in any cause, civil or criminal, arising within, or coming from his county, shire, or stewartry ; and that in case any such sheriff-depute or stewart-depute shall not so reside, or shall so advise, plead, or otherwise act as an advocate, or shall be guilty of any gross misbehaviour, or neglect of duty, every such sheriff-depute or stewart-depute, being convicted of any such offence, upon a summary trial before the Court of Session, at the suit of his Majesty's advocate for the time being, or at the suit of any four or more of the freeholders entitled to vote in elections of members to serve in Parliament for such county, shire, or stewartry, shall be deprived of his office.

And be it further enacted by the authority aforesaid, That

from and after the said 25th day of March, which shall be in the year of our Lord 1748, it shall not be lawful for any principal, or high sheriff, or stewart in Scotland, personally to judge in any cause, civil or criminal, within his shire or stewartry, in virtue of such his office ; any law or usage in any ways to the contrary notwithstanding.

And be it further enacted by the authority aforesaid, That from and after the said 25th day of March, in the year of our Lord 1748, no fines, forfeitures, or penalties, set, imposed, or recovered in the sheriff's or stewart's court of any county, shire, or stewartry in Scotland, shall accrue, go, or belong to the sheriff or stewart, or any sheriff-depute or stewart-depute, but all shares of such fines, forfeitures, and penalties, as heretofore went to the judge, shall accrue and belong to his Majesty, his heirs, and successors, and shall be accounted for, and paid into the Exchequer of Edinburgh, in like manner ; and the like process, rules, orders, and methods of proceeding, shall be issued, observed, and used for levying the same, and compelling the accounting for, bringing in, and paying the same into the said Exchequer, as are now competent by law for the accounting for, levying, bringing in, and paying into the said Exchequer any fines, forfeitures, and penalties accruing or becoming due to his Majesty ; and that from and after the said 25th day of March, no fees, poundage, or profits, commonly called sentence-money, shall be received, taken, or demanded by any sheriff or stewart, sheriff-depute or stewart-depute, or any of their ministers, officers, or clerks, but all such fees, poundage, or profits, commonly called sentence-money, are hereby utterly taken away, discharged, and abolished ; any law, custom, gift, grant, usage, or practice to the contrary in any wise notwithstanding.

In the act 21. of Geo. II. *cap.* 19, there are the following clauses :

And it is hereby farther enacted, That no sheriff-depute, or stewart-depute, or substitute to any sheriff-depute or stewart-depute of any county, shire, or stewartry in Scotland, after the twenty-fifth day of December, in the year of our Lord 1748, shall be steward, chamberlain, or commissioner to any subject whatsoever, or collector of the cess, or shall exercise or act in the employment, service or office of such steward, chamberlain, commissioner, or collector; and if any such sheriff-depute, or stewart-depute, or substitute to any sheriff-depute or stewart-depute, shall accept or take upon him any such employment, service, or office, or exercise the same, or act therein, he shall from thenceforth forfeit his office or employment of sheriff-depute, stewart-depute, or substitute, and be *ipso facto* disabled to hold, enjoy, or exercise the same.

And whereas his Majesty has thought fit, for the more easy administration of justice, to appoint one sheriff-depute only for the shires of Fife and Kinross, one only for the shires of Stirling and Clackmannan, one only for the shires of Argyll and Bute, one only for the shires of Elgin and Nairn, one only for the shires of Sutherland and Caithness, and one only for the shires of Ross and Cromartie; be it enacted by the authority aforesaid, That the sheriff-deputes appointed for the said shires shall not be obliged to reside four months in each of the said shires, but that their residence within the two shires, considered as one district in that respect, shall be deemed sufficient to all intents and purposes.

The act 28. of Geo. II. *cap.* 7, repeals so much of the act 20. of Geo. II. *cap.* 43, as enacts that after the end of seven years from 25th March 1748, the offices of sheriff-depute and stewart-depute shall be held *ad vitam aut culpam*; and declares, that the sheriff-deputes and stewart-deputes already named, or to be named, shall, during the space of fifteen years from

the expiration of the said seven years, hold their respective offices for such continuance as his Majesty hath or shall think fit to appoint, by warrant under his sign manual; and, from the end of the said fifteen years, the offices of sheriff-depute and stewart-depute shall be granted and held *ad vitam aut culpam* only, with competent salaries.

The purpose of the act 39. of Geo. III. *cap.* 66, was to place "the salaries of the sheriffs depute and " substitute of Scotland upon the Scots civil list establishment."

The act 3. of Geo. IV. *cap.* 49, "concerning the " residence of sheriffs-depute of the counties of Edinburgh and Lanark," declares,

That from and after the passing of this act, every person holding the office of sheriff-depute of the county of Edinburgh shall reside personally within the city of Edinburgh, or within a distance therefrom not exceeding six miles, during the space of nine months at least in every year; and in like manner, that every person holding the office of sheriff-depute of the county of Lanark shall reside personally within the city of Glasgow, or within a distance therefrom not exceeding six miles, during the space of nine months at least in every year; declaring, that if either of the said sheriff-deputes shall not so reside, such sheriff-depute, being convicted of such offence, upon a summary trial before the Court of Session, at the suit of his Majesty's advocate, or at the suit of any four or more of the freeholders entitled to vote in elections of members to serve in Parliament for such county, shall be deprived of his office.

The act 6. of Geo. IV. *cap.* 23, "for the better regulation of the sheriff, and stewart, and burgh courts

“ of Scotland,” provides, *inter alia*, that the fees shall be regulated by the Court of Session, or Court of Justiciary, and reported to Parliament : it requires that all sheriff-clerks shall officiate in person, and declares,

That from and after the passing of this act, no person shall be appointed a sheriff or stewart substitute of any county or stewartry in Scotland, who shall not be an advocate of three years' standing at the least, or a clerk to his Majesty's signet, or a solicitor before the supreme courts in Scotland, or a procurator admitted to practise before a sheriff-court in Scotland, and who shall not have been admitted to practise as such clerk to the signet, solicitor or procurator, for at least three years previous to his appointment: And that no commission appointing any such person a sheriff or stewart substitute shall be valid, or enable any such person to do any act by virtue thereof, unless and until there be annexed thereto a certificate under the hands of the Lord President of the Court of Session and the Lord Justice-Clerk, bearing that such person is duly qualified and capable to discharge the duties of the said office : which certificate, after due inquiry made, the said Lord President and Lord Justice-Clerk are hereby required either to grant or to refuse.

And the act 6. of Geo. IV. *cap.* 24, “ for the more easy recovery of small debts in the Sheriff Courts in Scotland,” declares,

That from and after the passing of this act, it shall be lawful for any sheriff in Scotland, within his county, to hear, try, and determine all civil causes and complaints that may be competently brought before him, wherein the debt or demand shall not exceed the value of eight pounds sterling, exclusive of expenses and fees of extract, in a summary way, as more particularly herein after mentioned.

II. And be it enacted, That all such causes, the pursuer

whereof shall choose to have the same heard and determined according to the summary mode hereinafter provided, shall proceed upon petition or complaint, agreeable to the form in schedule (A.) subjoined to this act, stating shortly the origin of debt or ground of action, and concluding against the defender; which petition or complaint shall have a warrant annexed thereto, agreeable to the form in the said schedule (A.); which warrant, being signed by the sheriff-clerk, shall be a sufficient authority for any sheriff's officer for summoning the defender to appear and answer at the next sheriff-court, the same not being sooner than upon the sixth day after the date of the citation, and also for summoning witnesses and havers for both parties: Provided always, that a copy of the said petition or complaint, with the citation annexed, and also a copy of the account, document of debt or state of the demand, with the names and designations of the witnesses and havers, and a statement of other means of proof, shall be delivered at the same time, with the copy of the said petition, by the sheriff's officer, to the defender personally, or at his dwelling-place; in which last case, if the defender shall not appear, he shall be cited a second time personally, or at his dwelling-place, upon the words *de novo* being either subjoined to the original petition and signed by the sheriff-clerk, or written in the procedure book kept by the clerk, and signed by the sheriff, to appear at the next court, which shall not be sooner than upon the sixth day after the date of the said citation; and if the defender has been cited for the first time to a diet of court, not sooner than twelve free days from the date of the citation, it shall be lawful for the sheriff's officer, in case the defender shall not have been personally found at the time of the first citation, to cite him a second time, either personally, or at his dwelling-place, to the same diet of court, on the authority of the original warrant, and without previously returning an execution of the first citation; provided that such second

citation shall not be given sooner than upon the sixth day after the date of the first citation, nor later than upon the sixth day before the diet of court, to which the defender is so cited for the second time; and the officer summoning shall, in all cases, return an execution of citation signed by him, or shall appear and give evidence upon oath of his having duly cited the defender in manner aforesaid.

III. And be it enacted, That where an officer of court shall be required by any party, whether pursuer or defender, to cite any persons as witnesses or havers, he shall be obliged to lodge a written execution of every such citation in the clerk's hands, at or before the diet of court to which the witnesses have been summoned, or otherwise to verify in court the execution of citation; and if any witnesses or havers cited shall fail to appear, it shall be competent to the party or parties for whom they are summoned to apply for a new warrant to compel their attendance at the next court; or any subsequent court to which the case may be adjourned; which warrant shall require them to attend to give evidence under a penalty not exceeding forty shillings, which shall be awarded by the court, unless a reasonable excuse be offered and sustained, and shall be made payable to the party at whose instance the witness was cited, to be recovered in the same manner as other sums under this act, without prejudice always to letters of second diligence for compelling witnesses and havers to attend, as at present competent.

IV. And be it enacted, That when the parties shall appear, the sheriff shall hear them *viva voce*, and examine witnesses or havers upon oath, and also the parties by declaration, or upon oath; and no procurators, solicitors, or any persons practising the law, shall be allowed to plead for them, *viva voce*, without leave of the court, nor shall any of the pleadings, arguments, minutes or evidence, be reduced to writing, or be entered upon any record, unless with leave of the court first had and obtained, in consequence of any diffi-

culty in point of law, or special circumstances of any particular case; provided always, that where the sheriff shall order any pleadings, arguments, minutes, or evidence to be reduced to writing, every case in which such order shall be made shall thenceforth be conducted according to the forms and proceedings in use before the passing of this act, and shall be disposed of in all respects as if this act had not been passed.

V. And be it enacted, That if a defender who has been duly cited personally, or by two citations at his dwelling-place, shall fail to appear personally, or by one of his family, or by such person as the sheriff shall allow, he shall be held as confessing the debt or justice of the demand, and decree shall pass against him, unless a sufficient excuse for a delay shall be stated, in which case, and at all times, on account of the absence of witnesses, or any other good reason, it shall be competent for the sheriff to adjourn any cause to the next or any other court day, and to order the parties and witnesses then to attend.

VI. And be it enacted, That where a decree has been pronounced in absence of a defender, it shall be competent for him, upon consigning the sum decerned for in the hands of the clerk, at any time before the days of the charge elapse, to obtain from the clerk a warrant, signed by him, sisting execution till the next court day, or to any subsequent court day to which the same may be adjourned, and containing authority for citing the pursuer, witnesses and havers for both parties; and the clerk shall be bound to certify to the sheriff, on the next court day, every such application for rehearing and sist granted; which warrant, being duly served upon the pursuer personally, or by two citations at his dwelling-place, in the manner provided in other cases by this act, shall be an authority for rehearing the cause; and in like manner, where absolvitor has passed in absence of the pursuer, it shall be competent for him, at any time within one

calendar month thereafter, upon consigning in the hands of the clerk the sum awarded by the sheriff in his decree of absolver as the expenses for the defender and his witnesses, to obtain a warrant, signed by the clerk, for citing the defender and witnesses for both parties; which warrant, being duly served upon the defender personally, or by two citations, at his dwelling-place, in the manner provided in other cases by this act, shall be an authority for rehearing the cause, as hereby provided in the case of a rehearing, at the instance of the defender, the said sum of expenses awarded by the sheriff, and so deposited by the pursuer, being in every case paid over to the defender, unless the contrary shall be specially ordered by the court.

VII. And be it enacted, That the sheriff-clerk shall keep a book wherein shall be entered all causes conducted under the authority of this act, setting forth the names and designations of the parties, and whether present or absent at the calling of the cause, the nature and amount of the claim and date of giving it in, the mode of citation, the several deliverances or interlocutors, and the final decree, with the date thereof; which book shall be signed each court day by the sheriff, and the said entries by the clerk shall be according to the form in schedule (B.) annexed to this act, or with such additions as the sheriff shall appoint; and the decree stating the amount of expenses found due to either party, and containing warrant for arresting or poinding the effects of the party, or committing him to prison, shall be by the clerk annexed to the complaint, and in the same paper with it, the said decree and warrant so annexed being conformable to schedule (A.) annexed to the present act; which decree and warrant so written out, being signed by the clerk, shall be a sufficient authority for execution, six free days from the date of the decree, if the party against whom it shall have been given was personally present when it was pronounced; but if he was not so present, execution shall only proceed

after a charge of six free days, by delivering a copy of the decree to the party personally, or at his dwelling-place.

VIII. And be it enacted, That the sheriff may, if he thinks proper, direct the sum or sums found due to be paid by instalments, weekly or monthly, according to the circumstances of the party found liable, and under such conditions or qualifications as he shall think fit to annex.

IX. And be it enacted, That no decree given by any sheriff, according to the forms and regulations of this act, shall be subject to advocacy, suspension or appeal, or any other form of review or stay of execution, other than herein-before provided; excepting only an action of reduction before the Court of Session, on the ground of corruption or malice and oppression on the part of the sheriff; nor shall any such action of reduction be at all competent after expiration of one year from the date of the decree of the sheriff; and in all such actions of reduction, the pursuer shall, before the summons is called, find sufficient caution in the hands of the clerk of the process in the Court of Session, for the payment of the sum and expenses, if any, for which decret has been given against him by the sheriff, and for the payment of such expenses as may be awarded against him in the action of reduction.

X. And be it enacted, That the following fees, and no other, shall be allowed to be taken by the clerk and officers of court, for matters done under the authority of this act.

(Here follows the table.)

A copy of which table of fees, signed by the clerk, shall be hung up in every court place, and in his office; and the said fees shall be subject to modification in causes of very small amount, or where the complaint is directed against two or more defenders.

XI. And be it enacted, That no person shall be exempt from the jurisdiction of the sheriff in any cause carried on in a summary way under this act, on account of privilege as being a member of the College of Justice.

XII. And be it enacted, That in all civil causes wherein the debt or demand does not exceed the value of five pounds, exclusive of expenses and fees of extract, which shall in future be brought or carried on before any sheriff's court, not according to the summary form herein provided, it shall be lawful for any sheriff, notwithstanding, and he is hereby authorised and required to ordain the expenses, (unless he shall see cause to the contrary,) to be taxed and regulated according to the rates above mentioned.

XIII. And be it enacted, That in all cases in this or any act of Parliament, passed or to be passed affecting Scotland, where the term sheriff or sheriff-clerk, or sheriffdom or county, shall be used, the same shall be deemed and taken to apply to any steward or steward-clerk, or stewartry in Scotland.

Act of Sederunt, 12. Nov. 1825, as to form of process in the sheriff courts in civil causes.

COMMISSARIES.

The Commissary Court has a privative jurisdiction in the first instance, in regard to actions relating to marriage and divorce ;—to legitimacy ;—in confirmations as executor in the personal estate of a person deceased ; and in actions for reparation of injuries committed by scandal or defamation, when libelled in the ancient form peculiar to this judicature.

The consistory court at Edinburgh was established by charter from Queen Mary, dated 5th February 1563, and the commission appointing four judges is dated 7th March 1563. Particular instructions were also issued, dated 12th March 1563, not only for Edinburgh, but also for all inferior commissaries throughout

Scotland. These proceedings were ratified by Parliament : See acts 1567, *cap.* 28, and 1592, *cap.* 25.

It appears that the appointment of commissaries was originally exercised by the prelates or bishops ; but, at the Reformation, this patronage devolved to the crown. It afterwards reverted to the bishops, by act 1609, *cap.* 6, which declared the Court of Session to be the King's "*Great Consistory*." Then at the Revolution, the patronage became vested in the crown ; and new instructions, dated 21st January 1666, were issued by King Charles II. At this date, and down to the year 1824, the court at Edinburgh had the power of reviewing all judgments pronounced by inferior commissaries.

But at length the statute 4. of Geo. IV. *cap.* 97, committed this important duty to the sheriffs, and declared the Court of Session to be the only competent court of review. It is as follows :

" Whereas an act was passed in the forty-eighth year of
 " the reign of his late Majesty King George the Third, in-
 " titled, An act concerning the administration of justice in
 " Scotland, and concerning appeals to the House of Lords ;
 " by which act his said late Majesty was empowered to name
 " and appoint, and pursuant to which his said late Majesty
 " did name and appoint, by his Majesty's royal sign manual,
 " certain persons to make inquiries into the form of process
 " before the Court of Session and the inferior courts, and
 " to report upon various matters therein particularly set
 " forth : And whereas an act was passed in the forty-ninth
 " year of the reign of his said late Majesty, intituled, An act
 " to give to the persons named by his Majesty, pursuant to
 " an act passed in the last session of Parliament, intituled,

“ An act concerning the administration of justice in Scotland, and concerning appeals to the House of Lords, further time for making their report or reports : And whereas the commissioners so appointed did make reports to his said late Majesty, and the two Houses of Parliament, relative to the subject-matter upon which they were directed to report : And whereas, by a warrant under the sign manual of his Royal Highness the Prince Regent, acting in the name and on behalf of his said late Majesty, dated the 8th day of February 1815, other commissioners were appointed for inquiring into the duties, salaries and emoluments of the several officers, clerks and ministers of justice of the courts of Scotland, and for reporting what regulations might be fit to establish respecting the same ; which commissioners have accordingly made several reports, which have been laid before Parliament, and in which it is recommended that provision should be established with respect to the granting confirmations, which may prevent the just rights of next of kin and of creditors from being defeated ; that quots or compositions should be abolished ; and that certain regulations with respect to fees and otherwise should be made in regard to the court of the commissaries of Edinburgh, and with respect to the jurisdiction of inferior commissary courts :” Be it therefore enacted, &c. That from and after the 1st day of January 1824, all compositions in respect of confirmation, and all fees termed consignation, fee and sentence money, shall be, and the same are hereby from thenceforth abolished.

II. And be it further enacted, That from and after the first day of January 1824, extracts of decrees in the said court of the commissaries of Edinburgh, and testaments testamentar in the manner now practised, shall cease and determine ; and thereafter abridged forms of extracts, in the manner herein after provided, shall be adopted ; save and

except where a full extract shall be required in the manner now practised by any party desiring the same.

III. And be it further enacted, That as soon as conveniently may be after the passing of this act, the judges of the said court of the commissaries of Edinburgh shall, and they are hereby directed and required, to frame a proper and suitable table of fees, to be taken by the clerks and officers of the said court, and the practitioners before the same, for and in respect of proceedings in such court, in order to fix and ascertain the emoluments and charges which shall be justly exigible by such clerks, officers and practitioners; and also proper and suitable forms for abridging the forms of extracts now in use in the said court, as nearly as may be according to the forms for extracts prescribed by an act passed in the fiftieth year of the reign of his late Majesty King George the Third, intituled, An act for abridging the form of extracting decrees of the Court of Session in Scotland, and for the regulation of certain parts of the proceedings of that court; and also to fix and ascertain the fees to be paid for such extracts, to be included in the said table of fees, having regard to the reports of the said commissioners in that behalf.

IV. Provided always, and be it enacted, That every such form and table of fees, to be framed by the judges of the said court, pursuant to this act, shall be presented by such judges to the Lords of Council and Session, by whom the same shall be considered; and after due deliberation and conference, if necessary, with the said judges, every such form and table of fees shall, with or without alteration, be adjusted and published by an act of sederunt of the Court of Session; and it shall be lawful for the said Lords to alter any such form and table of fees by a new act or acts of sederunt, from time to time thereafter, as they shall see cause: Provided always, that every such act of sederunt shall be reported to Parliament in manner herein after directed.

V. And be it further enacted, That from and after the first day of January 1824, the office of principal clerk of the said court of the commissaries of Edinburgh shall be, and the same is hereby from thenceforth abolished, and thereafter there shall be only two clerks of the said court entitled to receive fees; the one to be appointed by his Majesty, and who shall perform the duties of his office in person; the other to be named by the clerk so appointed, as his deputy during his pleasure, and for whom he shall be responsible.

VI. And be it further enacted, That from and after the said first day of January 1824, the boundaries of all other inferior commissariats, as they exist at present, shall cease and determine; and from thenceforth every sheriffdom and stewartry shall constitute a commissariat, excepting always the sheriffdoms of Edinburgh, Haddington and Linlithgow, which sheriffdoms shall be and remain the commissariat of Edinburgh, as provided by this act; and provided always, that where two counties shall be under the jurisdiction of one sheriff, such two counties shall constitute one commissariat.

VII. And be it further enacted, That from and after the said first day of January 1824, the jurisdiction now exercised by the commissaries of Edinburgh, in actions for the recovery of debts not exceeding forty pounds Scots, and all prorogation of their jurisdiction in any action for the recovery of debt, shall be, and the same is hereby declared to be from thenceforth abolished and prohibited; and no inferior commissary, as established by this act, shall possess or exercise any jurisdiction in such actions, or in any cases to which the jurisdiction of the sheriff is now competent.

VIII. And be it further enacted, That from and after the said first day of January 1824, the persons then severally filling the offices of inferior commissaries shall cease to hold such offices; and the persons then filling the offices of sheriffs or stewarts depute shall respectively become commis-

saries, each over the commissariat comprehending the county or stewartry, or counties of which such persons shall respectively be sheriffs or stewarts depute; and every such person shall continue to hold the said office of commissary so long as he shall fill the said office of sheriff or steward depute of such county or stewartry, or counties, and no longer; and every person thereafter appointed to the office of sheriff or steward depute shall, in consequence of such appointment, become the commissary of the commissariat hereby established, over the county or stewartry, or counties of which he is appointed the sheriff or steward depute, and be vested with all the jurisdiction, powers and privileges belonging to the said office of commissary therein, and shall continue to hold and exercise the same so long as he shall fill the said office of sheriff or steward depute, and no longer.

IX. And be it further enacted, That it shall not be lawful or competent for the judges of the said court of the commissaries of Edinburgh to review the proceedings of inferior commissaries as established by this act, but all such proceedings shall be reviewable only by the Court of Session.

X. And be it further enacted, That it shall and may be lawful for every sheriff or steward depute, hereby appointed a commissary, and his successor in office, within his sheriffdom or stewartry, to name and appoint, as his deputy or deputies, the person or persons acting as sheriff substitute or substitutes within such county, so long as any such person or persons shall continue so to act; and every such commissary and commissary-depute shall exercise, within their several commissariats, as hereby constituted, the powers and authorities exercised by the present commissaries, save and except as is provided by this act.

XI. And be it further enacted, That all actions and proceedings which shall be depending on the said first day of January 1824, before any inferior commissary, shall, by virtue of this act, be transferred to the commissary of the coun-

ty or stewartry wherein such actions and proceedings would have originated if this act had been passed previous to the commencement thereof; and such actions and proceedings shall thereupon be pursued and brought to a conclusion before such commissary, in the same manner as if they had been brought or commenced before such commissary in the first instance; and as soon as conveniently may be after the said first day of January 1824, the processes in all such depending actions, and all such depending proceedings, shall be accordingly transmitted, together with an inventory thereof made by the commissary-clerk, to the accuracy of which he shall make oath, if required.

XII. And be it further enacted, That as soon as conveniently may be after the said first day of January 1824, all other processes, records, and warrants of decrees of inferior commissaries, together with an inventory thereof made by the commissary-clerk, which he is hereby required to do, and to make oath to the accuracy thereof, if required, shall be transmitted to the General Register-House at Edinburgh.

XIII. And be it further enacted, That in counties or stewartries wherein a commissary court is at present held, the clerk of such court shall, after the said first day of January 1824, become the commissary-clerk for the commissariat hereby established in such county or stewartry, with power to such commissary-clerk to name a deputy to act for him so long as he shall hold the said office, and for whom he shall be responsible; and in any county or stewartry where more than one of such courts is at present held, the commissary-clerk, whose emoluments shall amount to the highest annual sum as set forth in the report of the said commissioners in that behalf, herein before recited, shall become the commissary-clerk for the commissariat hereby established in such county or stewartry, with power to name a deputy as aforesaid.

XIV. And be it further enacted, That in all other coun-

tries, as also in the event of the death, resignation, or removal of any such commissary-clerk, who shall become the commissary-clerk of a commissariat, as immediately before directed, it shall and may be lawful for his Majesty, his heirs and successors, to appoint a proper person to be commissary-clerk; and every person henceforth to be appointed a commissary-clerk shall perform his duty in person.

XV. And be it further enacted, That all appointments and nominations to any office in any of the said commissary-courts shall be made without receiving any price, gratuity, or valuable consideration of any kind.

XVI. And be it further enacted, That as soon as conveniently may be after the passing of this act, the Court of Session, at a meeting specially called by the Lord President for this purpose, shall, and they are hereby directed and required to appoint, by a commission duly executed by them, five sheriffs or stewarts depute, for the purpose of establishing tables of fees in the several inferior commissary-courts as hereby established, in the manner directed in the case of the court of the commissaries of Edinburgh, regard being always had to the reports of the said commissioners herein before recited in that behalf.

XVII. And be it further enacted, That the said five sheriffs or stewarts so appointed shall, and they are hereby authorised and required, to frame proper and suitable forms for abridging the extracts of the decrees of the said inferior commissary-courts, as established by this act, as nearly as may be according to the forms for extracts prescribed by the said act passed in the fiftieth year of the reign of his late Majesty King George the Third, intituled, An act for abridging the form of extracting decrees of the Court of Session in Scotland, and for the regulation of certain parts of the proceedings of that court.

XVIII. And be it further enacted, That a report or reports shall be made to the Court of Session, by the said five

sheriffs or stewarts so appointed, as to the several matters and things upon which they are directed to report as aforesaid : and after such reports shall have been so made, it shall and may be lawful for the said court, if they think fit, to require explanations or information relative to any part of such report or reports, and to have conferences thereupon with all or any of the said sheriffs and stewarts so appointed ; and after being well and ripely advised in that behalf, it shall and may be lawful for the Court of Session to give effect to the same by any act or acts of sederunt, to be observed in each of the said commissary-courts established by this act, and the several persons holding offices and discharging duties therein, or practising before the same.

XIX. Provided always, and be it enacted, That a copy of every such act of sederunt, and table of fees to which it may or shall refer, shall be transmitted by the Lord President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament, at or immediately after the commencement of the session of Parliament next ensuing the passing of this act ; and every fee sanctioned by such act of sederunt shall, and may be demanded and taken from and after the said first day of January 1824, and shall thereafter, according to the terms of such act of sederunt, be, and be deemed and taken to be a legal fee, and payable and receivable as such in the manner therein directed, unless altered by Parliament.

XX. And be it further enacted, That from time to time, and in all time hereafter, as often as it shall appear to be necessary, it shall and may be lawful for the Court of Session, at a meeting to be called by the Lord President for that purpose, to appoint, by a commission duly executed by them, five sheriffs-depute, for the purpose of considering any such table of fees theretofore established, in or for the inferior commissary courts hereby established, by which five

sheriffs, so to be from time to time appointed, a report or reports shall be made to the Court of Session as herein before directed; and after any such report shall have been made, it shall and may be lawful for the said Court, if they think fit, to require explanations or information relative thereto as aforesaid, and to have conferences thereupon with all or any of the said sheriffs, and by act or acts of sederunt to make and establish a further or other table or tables of fees in and for the said inferior commissary courts, and the officers and practitioners therein: Provided always, that no claim of compensation shall arise or be allowed to any clerk or officer appointed after the passing of this act, by reason of any such farther table of fees; and provided always, that a copy of every such act of sederunt, together with any table of fees to which it may refer, shall be transmitted by the Lord President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament as herein before directed; and after the expiration of the period herein before limited, as the case may be, every such act of sederunt and table of fees shall become in force; and thereafter, but not sooner, every such fee shall, according to the terms of such act of sederunt, be and be deemed and taken to be a legal fee, and payable and receivable as such, in the manner therein directed.

XXI. And be it further enacted, That it shall and may be lawful for any commissary, commissary-clerk or other officer, holding his office at the passing of this act, and entitled to compensation for loss to be suffered through the operation and effect of this act, to make application to the Barons of Exchequer in Scotland, who shall direct intimation thereof to be given to his Majesty's advocate, and thereafter the said Barons shall inquire into and consider the circumstances of the case, and after due investigation of the legality of the claim, and of the fees or emoluments, in re-

spect whereof such loss shall be stated to have arisen, and having regard to the fees to which any such person may become entitled pursuant to this act, the said Barons shall award to every such person such compensation as they shall think such person entitled to, either by the payment of a gross sum, or by way of annuity, as they shall think proper: Provided always, that every order made for such compensation shall be laid before Parliament within two calendar months after the commencement of the session next ensuing after making the same: Provided further, that no decision of the said Barons shall be final and conclusive until two calendar months after a copy of the order of such Barons for compensation shall have been laid before Parliament.

XXII. And be it further enacted, That any sum of compensation so to be awarded shall be paid and payable upon the order of the said Barons, in such manner and at such time or times as they shall direct, out of any monies charged or made chargeable by acts made in the seventh and tenth years of the reign of her Majesty Queen Anne, with the fees, salaries and other charges allowed, or to be allowed for keeping up the Courts of Session, Justiciary or Exchequer; and every sum of compensation to be paid shall be free and clear of all taxes and deductions whatsoever.

XXIII. And be it further enacted, That the respective salaries of sheriffs and stewarts depute and substitute shall, after the passing of this act, be paid to them free of all taxes and deductions whatsoever, any law or practice to the contrary notwithstanding.

Provision for salaries to the judges at Edinburgh is made by the act 55. of Geo. III. *cap.* 97, which grants to them “ a fixed salary, in place of their present salary, “ and certain fees and payments.”

There was a previous act, 46. Geo. III. *cap.* 49, applicable to all commissaries throughout Scotland, when

their appointments were separate from that of sheriff-depute; but this has, of course, become obsolete since the act 4. Geo. IV. above quoted.

Balfour's Practicks, p. 655.—Erskine, I. 5. and 6.—Bankton, IV. 13, Vol. II. p. 544.—Stair, III. 3. 42.

To illustrate the Sheriff's Jurisdiction, see Mor. Dict. voce "*Jurisdiction*," Division XIV.—Commissary Jurisdiction, *ibid.* VIII.

There are the following Acts of Sederunt relative to inferior commissaries throughout Scotland, viz. 25. Feb. 1824, —1. June 1824,—27. May 1825,—27. Jan. and 6. July 1826, —18. Jan. and 5. July 1827.

As to Form of Process before the Commissaries at Edinburgh, see A. S. 12. Nov. 1825.

SHOOTING, STABBING, &c.

The statute 6. of Geo. IV. *cap.* 126, entitled, "An act to make provision in Scotland for the further prevention of malicious shooting and attempting to discharge loaded fire arms, stabbing, cutting, wounding, poisoning, maiming, disfiguring and disabling his Majesty's subjects," declares,

That if any person shall, within Scotland, wilfully, maliciously and unlawfully shoot at any of his Majesty's subjects, or shall wilfully, maliciously, and unlawfully present, point

or level any kind of loaded fire arms at any of his Majesty's subjects, and attempt, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or shall wilfully, maliciously and unlawfully stab or cut any of his Majesty's subjects, with intent in so doing, or by means thereof, to murder or to maim, disfigure or disable such his Majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his Majesty's subject or subjects; or shall wilfully, maliciously and unlawfully administer to, or cause to be administered to or taken, by any of his Majesty's subjects, any deadly poison, or other noxious and destructive substance or thing, with intent thereby to murder or disable such his Majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his Majesty's subject or subjects, such person, being lawfully convicted of any the foresaid acts, shall be held guilty of a capital crime, and receive sentence of death accordingly.

II. And be it enacted, That if any person in Scotland shall, from and after the said first day of July, wilfully, maliciously and unlawfully throw at, or otherwise apply to any of his Majesty's subject or subjects, any sulphuric acid, or other corrosive substance, calculated by external application to burn or injure the human frame, with intent in so doing, or by means thereof, to murder or maim, or disfigure or disable such his Majesty's subject or subjects, or with intent to do some other grievous bodily harm to such of his Majesty's subject or subjects, and where, in consequence of such acid or other substance being so wilfully, maliciously and unlawfully thrown or applied, with intent as aforesaid, any of his Majesty's subjects shall be maimed, disfigured or disabled, or receive other grievous bodily harm, such person, being thereof lawfully convicted, shall be held to be guilty of a capital crime, and shall receive sentence of death accordingly: Provided always, that if it shall appear, upon the

trial of any person accused of the aforesaid offences, that, under the circumstances of the case, if death had ensued, the acts done would not have amounted to the crime of murder, such person shall not be held guilty of a capital crime, or be subject to the punishment aforesaid; and provided further, that nothing contained in this or any other statute enacting a capital punishment, shall be held to affect the power of the prosecutor to restrict the pains of law.

SMALL DEBT COURT. See JUSTICE OF PEACE.

SORNERS. See POOR.

STARR OR BENT. See HIGHWAYS, &c.

STATUTE. See ACT OF PARLIAMENT.

SUMMONS. See EXECUTION OF SUMMONS.

TACK.

Besides the personal obligation on the lessor or landlord to defend the tenant in his possession till the expiry of the lease, an additional security has been be-

stowed by statute on the tenant ; in virtue of which he is now entitled to continue possession till the expiration of the term fixed by the tack, notwithstanding of any sale of the lands to a third party, or other change of proprietor.

This advantage has been secured by the statute 1449, *cap.* 17, which is in the following terms :

Item, It is ordained, for the safetie and favour of the puir people that labouris the ground, that they and all utheris that hes taken or sall take landes in time to come fra lordes, and hes termes and zeires thereof, that suppose the lordes sell or annaly that land or landes, the takers sall remaine with their tacks unto the ischew of their terms, quhais handes that ever thay landes cum to, for siklike maill, as they tooke them for.

See Title "*Removing of Tenants*."—Erskine, II. 6. 23.

—Bell on Leases, II. 30.—Stair, II. 9. 1.—Tait's Justice of Peace, p. 516.

DECISIONS.—TO ILLUSTRATE THE TENANT'S RIGHT.

Waddel, 10. Dec. 1794, Mor. 10309.—Leith, 5. Dec. 1776, Hailes, I. 174.—Countess of Moray, 23. July 1772, reversed, Mor. 4392.—M'Pherson, 12. May 1815, F. C.—M'Arthur, 6. July 1804, Mor. 15181.—Clark, 27. Jan. 1816.—Redpath, 22. Nov. 1737, Mor. 15196.—Fraser, 6. Dec. 1758, *ib.* 15196.—Irvine, 27. July 1760, *ib.* 15199.—Scott, 19. Feb. 1777, Hailes, I. 404, Mor. 15200.—Wright, 17. Nov. 1763, *ib.* 15199.—M'Lauchlan, 11. Feb. 1748, *ib.* 15248.—Lord Cranstoun's Creditors, 4. Jan. 1757, *ib.* 15218.—Douglas's Creditors, 2. July 1757, *ib.* 15218.—Bells, 12. June 1814, F. C.—Carnegie, 24. July 1668, *ib.* 15887.—Pringle, 4. June 1741, *ib.* 15907.—Marquis of Queensberry, 18. Feb. 1814, F. C.—Binnie,

28. Feb. 1820.—Elliott's Trustees, 28. Nov. 1792.—Swinton, 20. June 1809.—Murray Kynynmond, 6. Nov. 1739, *ib.* 15906.—Wallace, 11. July 1627, Mor. 67.—Wallace, 16. Nov. 1750, *ib.* 2805.—Sime's Trustee, 23. May 1806, App. No. 13. *v.* *Tack*.—Yeoman, 2. Feb. 1813.—Brock *v.* Cabell, 29. Nov. 1822, S. & D. II. 52.—Russell, 3. Dec. 1822, *ib.* II. 62.—Thomson, 28. Nov. 1750, *ib.* 10337.—Earl of Dalhousie, 1. March 1782, *ib.* 10963.—Lord Minto, 20. Nov. 1798, *ib.* 15295.—Cunningham, 8. March 1803, *ib.* 15298.—Hay, 8. Dec. 1801, *ib.* 15297.—Duke of Roxburgh, 5. March 1785, *ib.* 10412.—Muir, 20. Jan. 1820.—Alison *v.* Proudfoot, 22. Jan. 1788, *ib.* 15290.—Earl of Peterborough, 8. March 1791, *ib.* 15293.—Jamieson Durham, 23. Jan. 1772, *ib.* 15288.—Laird, 30. June 1791.—Bell's Cases, 296.—Earl of Galloway, 6. June 1803.—Monro, 11. Dec. 1811.—Watson, 12. Dec. 1811.—Buchan Sydserf, 8. March 1814.—Pollock, 24. Feb. 1777, Mor. App. 4, *v.* *Tack*.—M'Kenzie, 13. Dec. 1811.—M'Intosh, 1. Feb. 1798, *ib.* No. 5.—Henderson, 24. Feb. 1802, Mor. 10054.—Fraser, 25. Feb. 1813.—Morison, 22. Feb. 1823, S. & D. II. 241.—Miller, 26. May 1824, *ib.* II. 65.—Muir M'Kenzie, 18. June 1811.—Wortley M'Kenzie, 13. Dec. 1811.—Ronaldson, 21. May 1804, *ib.* 15270.—Marquis of Tweeddale, 18. June 1808.—Earl of Hoptoun, 17. Jan. 1810.

TO ILLUSTRATE THE LANDLORD'S RIGHT.

Colquhoun, 15. Feb. 1668, Mor. 15253.—Bethune, 10. Feb. 1778, *ib.* 15267.—Smith, 21. June 1768, *ib.* 15266.—Brown, 31. May 1822, Shaw.—Touch, 16. June 1664, Mor. 15252.—Bogue, 21. Nov. 1806, *ib.* App. 2, *vide Planting*.—Campbell, 2. June 1795, *ib.* 9646.—Duke of Hamilton, 21. May 1876.—Bligh, II. 196.

TEINDS. See COMMISSION OF TEINDS.

TESTAMENT. See EXECUTORS.

THIRLAGE.

For encouraging the improvement of lands subject to the servitude of thirlage, in that part of Great Britain called Scotland, the statute 39. of Geo. III. *cap.* 55, provides and declares as follows :

“ Whereas it is found by experience, That the servitude
“ of thirlage, and right of mill-services incident thereto in
“ Scotland, are very unfavourable to the general improve-
“ ment of the country, by checking the industry of the oc-
“ cupiers of the ground, and by occasioning troublesome
“ and expensive litigation ; and that it is highly expedient
“ that it should be allowed to persons subject to such servi-
“ tude to compensate or to commute the same by a fixed
“ annual payment, in lieu and satisfaction of the said right
“ of thirlage, and of all services, prestations and restrictions
“ thereto incident or pertaining, and in some cases to make
“ an entire and complete purchase of the same for a fair and
“ adequate price :” Therefore, be it enacted, &c. That it
shall and may be lawful for the proprietor or proprietors of
any lands or tenements, thirled or astricted to any mill in
Scotland, or to the proprietor of any mill to which the lands

or tenements of any other person or persons are thirled or astricted, who shall be desirous to have such thirlage or astriction changed or commuted into such annual payment, to apply to his Majesty's sheriff or steward depute of the county or stewartry in which such lands, or tenements, or mills, are situated, or to his substitute, by a petition, setting forth such his or their desire, and specifying the lands and tenements so thirled, which he or they is or are desirous should be freed from such thirlage, and the mill or mills to which such lands or tenements are so thirled, and also the nature of the thirlage, the several species of corn or grain over which it is extended, the quantity of multure paid for grinding every sort of grain, the services dependent on the right, and the total amount of the multures and other dues claimed or allowed to be due ; which petition the said sheriff or steward depute, or substitute, shall order to be served on the other party or parties interested in the said thirlage, and on the tenant or tenants of the mill or mills described in the said petition, and shall also cause an edictal citation to be made of all parties having or pretending to have interest in the said thirlage, at the church or churches of the parish or parishes within which the mill, and also the lands thirled thereto, are situated ; and the party or parties on whom such petition is served shall, within forty days after such service and citation, if within Scotland, or if furth thereof then within sixty days, lodge with the sheriff or steward clerk their answers to the petition, (and if any of the said subjects are entailed, on the next substitute heir of entail within the kingdom, who would succeed failing the heir in possession and his family,) and shall therein set forth all objections they may have, either to any further procedure, or to the matters of the said petition ; and they shall also state every claim, demand, or deduction which they are either then or afterwards to make or crave ; which petition and answers the sheriff or steward depute, or his substitute, shall immediately take into consideration, and within thirty days shall make an or-

der or decree finding and declaring the precise matters in the said petition and answers which are relevant to pass to the knowledge of a jury in manner after mentioned; and twenty days from the date of such order or decree having elapsed, or in case of any advocacy, suspension, or other stay by the authority of a superior court, within ten days after such advocacy, suspension, or other stay, has been discussed and removed, the sheriff or steward depute, or his substitute, shall pronounce an interlocutor, appointing a jury to be summoned on a certain day, to be expressed in the said interlocutor, at the distance of not less than thirty, and not more than forty days from the date of such interlocutor, to give their verdict or determination on the matters contained in the said petition and answers, and decree made thereon by the said sheriff or steward depute, or substitute, or by a superior court, in such manner, and for such purpose as herein after is directed, and the said sheriff or steward depute, or his substitute, is hereby directed and required to summon an assize of at least twenty-one impartial and disinterested men, each of whom shall be an heritor or tenant of land, paying thirty pounds sterling of yearly rent within the said county or stewartry, or in the case of heritors occupying their own lands, then of thirty pounds Scots of valued rent, on such day as shall be mentioned in the interlocutor aforesaid; which assize being called on said day, the number of persons then attending on the said assize shall be reduced to nine by each party, (that is, the proprietor of the mill on the one part, and the proprietor or proprietors of the thirled lands or tenements on the other,) striking off alternately, beginning on the part of the proprietor of the mill, or in case of any of the parties not appearing, by the sheriff or steward depute, or substitute, striking off for and in behalf of such party, till the number be reduced to nine, who shall be sworn and constitute a jury for the determination of the annual value of the thirlage services and prestations thereto annexed, which is submitted to their consideration; before which jury, and the said

sheriff or steward depute, or substitute, the said petition and answers and decree, together with such evidence as any of the parties may incline, shall be laid ; which evidence shall be taken in writing, and remain for four years at least upon record in the court where it was taken ; and after deliberating thereon, and hearing parties and their procurators, if they shall desire to be heard, and upon a due consideration of the circumstances of the case, the said jury shall, by their verdict or determination, fix and ascertain the amount of such annual payment in grain, of such kinds, and in such quantity and amount as to the said jury shall appear to be a just, fair, and equal value and compensation for the said right of thirlage, and all and every service, prestation, or restriction thereto annexed or incident : of which verdict or determination an abbreviate shall be registered by any of the parties in the General Register of Sasines at Edinburgh, or the particular register for the said county or stewartry, within sixty days after the pronouncing of such verdict or determination ; provided always, that nothing herein contained shall invalidate or infringe the right competent to the proprietor of any mill for supporting and repairing the mill-dam, and the lead or aqueduct conducting the water to said mill, by taking stones, turf, or other materials from the thirled lands of any neighbouring heritor along which the said aqueduct passes, or of deepening or clearing the same, conform to use and wont.

“ II. And whereas the said petition and answers may contain matters of law touching rights of thirlage, whereto “ the said sheriff or steward depute or substitute has not a “ competent jurisdiction ;” be it therefore enacted, That it shall be lawful to the said sheriff or steward depute or substitute, and they are hereby empowered and authorised, to decide and determine, by their order or decree on the said petition and answers, all questions in law therein contained respecting the nature, quality and extent of the thirlage to

be valued, and services, prestations, and restrictions thereto incident, or the claims, demands and deductions, made or craved by either of the parties, any law or practice to the contrary notwithstanding.

III. Provided always, That it shall not be lawful to the said sheriff or steward depute, or substitute, to pronounce any judgment or decree finding or declaring lands to be thirled or astricted to a mill where the proprietor of the lands denies the existence of any such right of thirlage, unless the other party produce an extract of a decret or declarator pronounced by the Court of Session, or sufficient evidence thereof in proof of his right, and that the said sheriff or steward depute or substitute shall (such production not being made) dismiss the petition in so far as regards the lands which are denied to be thirled, and proceed only to the valuation of the thirlage of those lands which are confessed to be thirled, as in manner is before directed.

IV. And be it specially enacted, provided and declared, That after the expiry of three years from the registration of the verdict of the jury, the said verdict, and the proceedings had relative thereto, shall not be reduced, set aside, reviewed, altered or amended by the Court of Session, or any other judicatory, for any neglect of the provisions herein contained, or for any informality or error, or for any other reason or pretext whatever; and if any party shall pursue any process of reduction of the verdict of the jury, or other process for setting the same aside, or for altering or amending the same in the Court of Session, and shall fail in such pursuit or process, such party prosecuting as aforesaid shall be liable to the other party or parties in full costs of suit.

V. And be it further enacted, That after such verdict and determination as aforesaid, the servitude of thirlage, and all services, prestations and restrictions pertaining, or any way incident thereto, so valued by the said jury, shall cease to be exigible from or binding upon either or any of the parties,

but that in lieu thereof the said proprietor or proprietors, occapier or occupiers of the thirled lands or tenements shall be bound and obliged to receive annually, at the mill where the multure under the former servitude of thirlage was in use to be paid, or at some other convenient place to be fixed by the jury, such quantity or amount of corn or grain, of such kind or sort, kinds or sorts, as the said jury shall in manner foresaid determine to be a just compensation or equivalent for such right of thirlage, or, in the option of the payer, the value of such corn or grain in money, according to the value or price put upon such kind or kinds of corn or grain by the fiars of the county in which the grain is payable, for the year within which such payment is due.

VI. Provided always, and it is hereby further enacted and declared, That such verdict or determination shall not be prevented or delayed by the absence or non-attendance of any person interested in such thirlage, but that the jury shall proceed on such evidence as shall be produced to them by any of the parties then and there attending, and pronounce such verdict and determination as aforesaid, which shall be as valid and effectual, to all intents and purposes, as if all the parties interested therein had attended, and been heard in relation thereto; but it is also provided, that if any of the parties shall shew sufficient reason for adjourning the said day appointed for taking the verdict of the jury, it shall be lawful for the said sheriff or steward depute, or substitute, to make such adjournment to any day within thirty days from the day first appointed, the party praying an adjournment always defraying all expenses thereby incurred.

VII. And be it further enacted, That the annual payment herein above directed to be made in lieu and satisfaction of the said servitude of thirlage, shall be payable at the term of Candlemas in each year, the first payment to be made at the term of Candlemas immediately subsequent to the date of the verdict or determination of the said jury, the amount of which first payment shall be fixed by the said jury, according

to such proportion as they shall judge reasonable on the whole circumstances of the case.

VIII. And be it further enacted, That where the mill or mills aforesaid, with the rights of thirlage thereto annexed, are let to tenants under tacks or leases, the annual payment in grain or money, so fixed as aforesaid, to be paid as a commutation or equivalent for the right of thirlage annexed to such mill, shall, and the same is hereby declared to be payable, during the term or currency of such tack or lease, to the tenant or lessee of such mill or mills, and such annual payment shall be to such tenant or lessee, tenants or lessees, full compensation for or in lieu or satisfaction of all multure, mill services, or other rights or servitudes pertaining or incident to the said right of thirlage let to him or them by such tack or lease; such tack or lease, or any condition or prestation therein contained notwithstanding; and where the lands of the servient tenement or estate thirled are let in lease to tenants, and the proprietor shall pay the annual commutation or equivalent, the lessees shall in that case be obliged to make payment to the proprietor of a proportion of the said annual commutation or equivalent, corresponding to the rent of the lands let in lease, compared with the total amount of rent payable by the whole lands thirled, and that the said proportion of the said annual commutation or equivalent shall be recoverable by the proprietor in the same manner in which he is entitled to recover his rent.

IX. Provided always, and be it enacted, That if the proportion of rent shall be objected to by tenants paying one-fourth or more of the rent of the lands thirled, the said jury shall then divide, according to the best of their judgment, information and belief, the different parts of the commutation to be paid by the several tenants, according to the value of multures, services and prestations legally exigible from the several respective farms occupied or possessed by them; or if the parties are not then prepared, the sheriff or steward

depute, or his substitute, is hereby authorised and required, at the request and desire of the above-mentioned proportion of the tenants, again to convene the aforesaid jury, in manner and with notice as above directed, and that on any day within the space of two months from the date of the first award, when the said jury shall meet and make such division.

X. And whereas the annual payment to be adjudged under this act to the proprietor of a mill, in lieu of the multure, mill services and other rights from which the lands thirled are to be thereby relieved, is meant and understood to be of equal value, and a full compensation, for the discharge thereof, and in no ways to take from or diminish the value of his right as proprietor, it is hereby further enacted and declared, That the discharge of the multures, mill services and other rights belonging to a proprietor of a mill, as to the whole or any part of the lands astricted to it, and the substitution of an annual payment by way of compensation in place thereof, in the manner above provided for, shall afford to such proprietor no ground or pretence for claiming relief from any part of the cess or land tax payable by him in respect thereof, either where such mill stood separately valued in the cess books, or where it was included in a joint or cumulo valuation with other parts of his property; and for the same reason, that it shall not in any ways affect or impair any right of freehold, or qualification to elect or be elected as a member of Parliament, arising from or founded upon it, either where the mill, with all lands and multures of itself affords such qualification in respect of its valuation or old extent, or where it makes a part of a tenement which forms such qualification, either on its valuation, or as separately retoured of an extent sufficient for that purpose.

“ XI. And whereas there is a kind of thirlage known in the law and practice of Scotland, called a thirlage of the *invecta et illata*, to which sundry towns, burghs, burghs of

“barony, villages or other places in that part of the kingdom, and the inhabitants thereof are subject, which thirlage it is expedient to allow to be purchased by the persons subject to the same,” be it therefore enacted, That if any inhabitant or inhabitants of such town, burgh, village or place, shall be desirous to purchase an exemption from the said servitude of thirlage, and all and every the services and prestation incident thereto, to which the whole town, burgh, village or place is liable, from the proprietor of such mill or mills entitled to the same, it shall be lawful and competent to them to apply, in manner above mentioned, to the sheriff or stewart depute of the county or stewartry in which such town, burgh, village or place is situate, who shall take such proceedings, and summon a jury, in such a manner as is herein before particularly directed, which jury shall, by their verdict, fix and determine the full value in money of such right of thirlage in perpetuity, on which verdict and determination, the said sheriff or stewart depute or substitute shall pronounce decreet against the person or persons so petitioning or applying to him as aforesaid, for the sum so fixed and determined by such jury, on payment of which to the proprietor of the mill, such town, burgh, village or place, or such inhabitant or inhabitants thereof formerly subject to such thirlage, shall thenceforth be for ever freed and relieved of the same.

XII. And it is hereby further enacted, That such proceeding may take place, and such exemption be purchased in manner foresaid, notwithstanding the mill or mills to which such burgh, town or village is thirled, be held by the proprietor, or proprietors thereof, under a deed or deeds of entail, provided that the price paid for the same, in virtue of the determination of the jury and decreet of the sheriff hereby directed, shall be settled and secured in like manner as is directed in the case of superiorities sold to the vassals of entailed estates, by an act made in the 20th year of the reign

of his late Majesty King George the Second, intituled, An act for taking away the tenure of wardholding in Scotland, and for converting the same into blanch and feu holdings, &c.

“ XIII. And whereas it may happen that a mill, and some “ of the lands thirled to it, may be within different counties or “ stewartries,” be it enacted, That in such case the application shall be made to the sheriff or steward of the county or stewartry in which the mill is situated, before whom the parties concerned, who live without his jurisdiction, may be cited; by virtue of letters of supplement in common form.

XIV. Provided always, and it is hereby expressly enacted and declared, That nothing herein before contained shall apply to the case, where a permanent annual payment, either in money or grain, is already fixed or established under the name of dry multure in lieu of the servitude of thirlage; but reserving nevertheless to either party, as well the proprietor of the dominant as of the servient tenement, to apply in manner herein before directed, for commuting or compensating, by such fixed annual payments as herein before mentioned, all mill services and other prestations and restrictions, if any such are exigible, over and above the sum of money or grain payable in name of dry multure as-aforesaid.

Erskine, II. 9. 38, Note to last edition.

DECISIONS.

Coltart, 13. Dec. 1767, Mor. 16068, affirmed 28. Jan. 1774.—Duke of Roxburgh, 21. July 1785, *ib.* 16070.—Ballardie, 8. Feb. 1781, *ib.* 16063.—Bakers of Dundee, 23. May 1804, *ib.* 16076.

TRANSPORTATION.

By an English statute, 4. of Geo. I. *cap.* 11, provision was made, *inter alia*, for the more effectual transportation of felons. And a statute was afterwards passed, 6. of Geo. III. *cap.* 32, to extend these provisions to Scotland.

The first of these statutes has been expressly repealed by the act 5. of Geo. IV. *cap.* 84 ; from which it may be concluded, that the other relative enactment is also repealed ; the more especially, as the statute 5. of Geo. IV. is a general consolidating act, intended to supersede all prior regulations.

The following statutes either specially declare that they were temporary, or have been repealed :—43. of Geo. III. *cap.* 15, “ to facilitate and render more easy “ the transportation of offenders :”—56. of Geo. III. *cap.* 27, “ to amend several laws relative to the transportation of offenders :” this statute expired on 1st May 1821 :—1. and 2. of Geo. IV. *cap.* 6, “ to “ continue for two years from the passing of the act, “ to the end of the then next session of Parliament, “ the several acts for the transportation of offenders “ from Great Britain.”

It seems sufficient to give an outline from the rubric of the statute 5. of Geo. IV. *cap.* 84.

II. Offenders adjudged for transportation to be transported under this act. Power for subsequent court, &c. to allow

conditional pardon in cases where his Majesty extends mercy to the offender.

III. His Majesty may appoint places of transportation. Secretary of State to authorise persons to make contracts for transportation.

IV. Sheriffs or gaolers, on receiving orders for removal of offenders for transportation, to deliver them over to the contractor, if free from distemper.

V. Persons undertaking to transport offenders to give proper security.

VI. For punishment of transports misbehaving on the voyage.

VII. Secretary of State may give the custody of offenders transported in King's ships without security.

VIII. Governor of the colony, &c. to have property in the service of the offender.

IX. King's prerogative of mercy reserved.

X. His Majesty to appoint places of confinement in England and Wales.

XI. Appointment and duty of superintendent of places of confinement, &c. who is required to report at least twice every year to one of his Majesty's Principal Secretaries of State, to be laid before Parliament.

XII. Regulations for clothing offenders, &c.

XIII. His Majesty in council may direct convicts to be employed in any part of his dominions out of England, under the management of a superintendent and overseer.

XIV. Superintendent to make returns of prisoners, on 1st January, April, July, and October, yearly, to Secretary of State.

XV. Power and duty of superintendent and overseers.

XVI. Superintendent empowered to act as a justice of the peace.

XVII. Convicts adjudged by courts out of the united kingdom to transportation, and convicts pardoned on con-

dition of transportation, may, when brought to England, be imprisoned and transported.

XVIII. Convicts may be kept to hard labour, and may be removed to house of correction.

XIX. Time of imprisonment deemed part of the term.

XX. Offenders may be carried through any county to the seaport.

XXI. Expenses of removal to be paid by the county where the conviction took place.

XXII. Offenders found at large before expiry of sentence shall be punished with death.

XXIII. XXIV. & XXV. Form of indictment against offenders found at large, or against persons rescuing prisoners, &c.

XXVI. Protection of transported felons in the enjoyment of property acquired after conviction.

Hume's Comm. I. 351.

TREASON.

A natural consequence of the union between England and this country was, that the same laws for the protection of the Sovereign and the State should extend to all parts of the united kingdom. Before the Union, the treason laws of Scotland, especially in regard to the mode of conducting trials, were very different from those of England; but it is of course unnecessary to point out the peculiarities of each.

Article XVIII. of the Treaty of Union, declares, "that the laws which concern public right, policy and civil government, may be made the same throughout

“ the whole united kingdom.” And the statute 7. of Queen Anne, *cap.* 21, declares, “ that such crimes and “ offences which are high treason or misprision of high “ treason within England, shall be construed, adjudged, “ and taken to be high treason and misprision of high “ treason within Scotland; and that from henceforth no “ crimes or offences shall be high treason or misprision of “ high treason within Scotland, but those that are high “ treason or misprision of high treason in England.” It further provides, that the pains, penalties, and forfeitures of high treason shall be the same in both countries; and it appoints a mode of inquiry and trial, such as is agreeable to the English practice.

The basis of this branch of criminal law in England is the statute 25. of Edward III. *cap.* 2. In this act, there are seven distinct offences.

1. Compassing the death of the King.

By 36. of Geo. III. *cap.* 7, (a temporary statute passed on the occasion of an outrage on the person of the King,) it is made treason “ to compass, imagine, “ invent, devise or intend death or destruction, or any “ bodily harm tending to death or destruction, maim “ or wounding, imprisonment or restraint, of the per- “ son of our Sovereign Lord the King.” This act was declared perpetual by 57. of Geo. III. *cap.* 6.

2. Violation of the Queen or Princess.

3. Levying war against the King.

4. Adherence to the King's enemies.

By 52. of Geo. III. *cap.* 156, punishment of transportation is incurred by assisting prisoners of war to escape from their place of confinement ; or assisting such

prisoners to escape who are upon parole, whether they actually escape or not.

5. Counterfeiting the great or privy seals.

By 7. of Queen Anne, *cap.* 21, it is treason to counterfeit the seals appointed to be used in Scotland by the 24th article of the treaty of Union.

6. Counterfeiting the coin of the realm.

By 10. of Geo. II. *cap.* 28, the coining of copper money is punished with two years' imprisonment; but, by the 11. of Geo. III. *cap.* 40, the same offence is declared to be felony.

7. Killing the Chancellor, Treasurer, or the King's Justices of the one bench or the other, Justices in Eyre or Justices of Assize, and all other justices assigned to hear and determine, being in their places doing their offices.

By 7. of Queen Anne, *cap.* 21, it is treason to kill any of the Lords of Session or Justiciary sitting in judgment in the exercise of their offices within Scotland.

Besides the offences which are made treasonable by the statute of Edward, there are a variety of others which are considered so dangerous to the state as to have received a similar character from statute. These may be reduced to four classes.

1. It is treason to deny the authority and power of Parliament to settle the succession to the crown; or to hinder the succession of the person entitled to succeed according to the limitations of the act of settlement. This is fixed by two acts of Parliament, the 1. of Queen

Anne, *st. 2. cap. 17*, and the 6. of Queen Anne, *cap. 7*.

2. It is treason for the Pretender, or any of his family, to attempt to land, or to be found in any part of the united kingdom ; or for any subject to hold correspondence with them. This point is settled by two statutes, 13. and 14. of William III. *cap. 3*, and 17. of Geo. II. *cap. 39*.

3. It is likewise treason for any popish priest, born in the dominions of the crown of England, to come to this country and remain here for three days without conforming to the church : or for any subject to maintain the pope's jurisdiction : or repeatedly to use any bull issued from the see of Rome : or to withdraw allegiance from the crown of England, and promise fidelity to the see of Rome, or to entice others to do so. These offences form the subjects of four statutes : 5. of Elizabeth, *cap. 1*,—13. of Elizabeth, *cap. 2*, Parl. 2 and 3, —27. of Elizabeth, *cap. 2*,—and 3. of James I. *cap. 4*.

4. To falsify or injure the current coin, or even to have in one's possession instruments adapted only for the coining of money, is treasonable. This is declared by six statutes : 1. of Mary, *st. 2, cap. 6*,—1. and 2. of Philip and Mary, *cap. 11*,—5. of Elizabeth, *cap. 11*,—18. of Elizabeth, *cap. 1*, — 8. and 9. of William III. *cap. 26*, made perpetual by 7. of Anne, *cap. 25*,—and the 15. and 16. of Geo. II. *cap. 28*.

It is not intended to offer any account of the forms of procedure in trials for treason : this has been very fully treated of by Baron Hume. But there are some

enactments relative to this point, which fall within the plan of this work. The present mode of trial differs completely from the procedure followed in other criminal trials, and in trials for treason as practised in Scotland before the Union.

Section 4. of the statute 19. of Geo. II. *cap.* 9, declares,

That in all times hereafter, every person may be summoned and returned to be a juryman in trials for high treason in Scotland, who shall, at the time of such trial, be possessed in his own right, or in the right of his wife, of lands or tenements, as proprietor or liferenter, within the shire, stewartry or place where any such trials shall be, or from whence the jury is to come, of the yearly value of £. 40 Sterling at least, or valued at £.30 Sterling *per annum* in the tax-roll of the same shire or stewartry; and for want thereof, or for any other lawful cause, shall be subject to be challenged and set aside.

See title *Justiciary Court*, II. 56.

The act 22. of Geo. II. *cap.* 48, is in the following terms :

“ Whereas, by virtue of an act of Parliament made in the
 “ seventh year of the reign of her late Majesty Queen Anne,
 “ intituled, An act for improving the union of the two king-
 “ doms, all proceedings upon indictments for high treason
 “ or misprision of high treason committed in Scotland ought
 “ to be according to the laws of England: And whereas
 “ doubts may arise touching the method of proceeding in
 “ Scotland, to outlaw persons against whom bills of indict-
 “ ment are or may be found there, for high treason or mis-
 “ prision of high treason, by reason of the different forms of
 “ proceedings of the courts of justice in England and Scot-

“ land, and of the different kinds of officers to carry the same “ into execution :” Now, in order to remove all such doubts, and to establish one certain, clear and plain order and method of proceeding to outlawry against persons who have been or shall be indicted for high treason or misprision of high treason in Scotland; be it enacted, &c. That in case any person or persons is, are, or shall be indicted for high treason, or misprision of high treason, before any court of justice in Scotland having jurisdiction to take such indictments, and shall not be in custody for the same, the court wherein such indictment is or shall be found, or to which the same is or shall be duly certified, shall have full power and authority, and are required to issue one writ of *capias* against the person or persons so indicted, being so out of custody as aforesaid, directed to the sheriff or steward of the county, shire or stewartry wherein such indictment is or shall be found, and made returnable in the same court, forty-two days at least after the teste thereof, or a longer time by the discretion of the said court, if the case requires it; which writ shall be delivered to such sheriff or steward, who shall endeavour to find and apprehend the defendant or defendants named in such writ, within his county, shire or stewartry; and if the defendant or defendants shall be named in the said writ of any parish or place which lies in any county, shire or stewartry, other than that in which such indictment shall be found, then the said court shall issue one other writ of *capias* to the sheriff or steward of such other county, shire or stewartry, of the same teste, return and import with the said first-mentioned writ of *capias*; and if such respective sheriff or steward shall return to both said writs, or to the said first-mentioned writ of *capias*, (in cases where only one shall be necessary to be issued,) that the defendant or defendants is or are not to be found within the respective counties, shires or stewartries of such sheriff or steward, then the same court shall issue two other writs, the one a writ of

proclamation, the other a writ of exigent, and tested the day of the return of the said writ or writs of capias, and directed to the sheriff or steward of the county, shire or stewartry in which the parish or place, house or estate, of which the defendant or defendants is, are, or shall be named or described in the said indictment lieth; and such writs shall be both returnable on one and the same future day, and shall be delivered to such sheriff or steward, who shall execute and return the same in manner following, (that is to say,) by virtue of the said writ of proclamation, the said sheriff or steward shall cause the said defendant or defendants to be proclaimed three times, (that is to say,) once at the court of the sheriff or steward depute of such shire or stewartry, and a second time at the quarter sessions of the peace to be held for the same county, shire or stewartry, and a third time near to the church door, or, if there shall be no church, in some public part of the parish or place of which the said defendant or defendants shall be named or described in the said indictment, between the hours of ten of the clock in the morning and two in the afternoon, and such third proclamation shall be made twenty-eight days at least before the fifth and last sheriff or steward's depute court, at which the defendant or defendants are to be called by virtue of the said writ of exigent in manner herein after mentioned; and by virtue of the said writ of exigent, the said sheriff or steward shall cause the defendant or defendants to be called to appear at each of the five successive courts to be held by the sheriff or steward depute for the said county, shire or stewartry; and if the defendant or defendants shall not appear and surrender himself or themselves, so as to be forthcoming to justice, at some one or other of the said courts, at which he or they shall be so proclaimed or called as aforesaid, the said sheriff or steward depute shall, at the last of the said five courts, pronounce judgment of outlawry against him, her, or them, and shall sign such judgment of outlawry; and the sheriff or steward

of such county, shire or stewartry shall return the same, and the writs of proclamation and exigent, into the court from whence the same shall issue, together with indorsements on each, certifying that the said sheriff or steward has done every thing required of him by the said writs, and that the defendant or defendants did not appear (if that shall be the case,) and thereupon such defendant or defendants shall be and be deemed to be outlawed for such high treason or misprision of high treason respectively, according to law, to all intents and purposes whatsoever; and the defendant or defendants so outlawed for high treason shall be and be deemed to be attainted of such high treason as is or shall be mentioned and contained in such indictment, and shall be subject and liable to such and the like execution and corruption of blood, and to such and the like pains, penalties, forfeitures and processes, with respect to their estates real and personal, moveable and immoveable, to which persons attainted of high treason are by law subject and liable; and the defendant or defendants so outlawed for misprision of high treason shall be subject and liable to all such and the like forfeitures, and to all such and the like processes, out of the court where the said writ or writs, proclamation or proclamations, and judgment of outlawry shall be returned, and also out of the Court of Exchequer in Scotland, to seize and take the person and estate, and goods, moveable and immoveable, real and personal, of such defendants so outlawed for misprision of high treason, as persons outlawed according to the law of England for misprision of high treason are liable and subject to; and all defendants outlawed for high treason or misprision of high treason in Scotland shall, as near as can be, have all such and the like writs, means, methods, remedies, and advantages, in such and the like manner and time, and on such and the like terms and conditions, for avoiding, falsifying, or reversing any such outlawry, as may be had by the law and usage of England in

the like cases, (excepting so far as the forms of proceeding are varied and settled by this act); and all the writs herein before mentioned, with the returns thereof, and judgments of outlawry, shall be recorded and preserved in the court to which the said writs shall be returned, unless removed by due course of law.

II. And whereas the courts of the sheriff or steward depute in Scotland are not held at certain stated times, which might occasion uncertainty and delay in the before-mentioned proceedings, be it enacted, &c. That such sheriffs or stewarts to whom the said respective writs of proclamation and exigent shall be directed and delivered, shall, and they are hereby empowered and required forthwith to cause five successive courts of the sheriff or steward depute to be held for the purposes before mentioned, in such manner as shall be necessary for the due execution of the said writs, three days' notice being first given, before the first court at the head-borough of the county or stewartry, of the times and places where such courts shall be held; and the first of the said five successive courts, at which the defendant or defendants is or are to be called by virtue of the writ of exigent, shall be held within twenty days after the delivery thereof to the sheriff or steward, and each of the four successive courts shall be held at the end of four weeks from the court preceding.

III. And be it further enacted, &c. That all the said writs of capias, proclamation, and exigent, shall be in the name of his Majesty, his heirs and successors, under the seal of such court from whence the same shall issue, and such writ of capias shall contain a command to the sheriff or steward to take the defendant or defendants, and have him, her, or them, before the court whence the said writ shall issue, at a certain time and place therein to be mentioned; and the writ or proclamation shall command such sheriff or steward to take the defendant or defendants, and have him, her, or them, before

such court, at a certain time and place therein to be mentioned; and if he, she, or they cannot be found within his shire or stewartry, then to cause public proclamation to be made in the court of the sheriff depute, or stewart depute, at the general quarter sessions of the peace, to be held for the same shire or stewartry, and at the door of the church or place, or if no church, at some open part of the place of which such defendant or defendants is, are, or shall be named or described in such indictment, that he, she, or they be before the court from whence such writ shall issue, at a certain time and place therein to be mentioned; and the said writ of exigent shall contain a command to the sheriff or stewart to cause the defendant or defendants to be called, from court to court of the sheriff or stewart depute, until he, she, or they be outlawed; and if he, she, or they shall appear, then to take him, her, or them, and have his, her, or their body or bodies, before the court whence such writ of exigent shall issue, at a certain time and place therein to be mentioned, to answer to his Majesty, his heirs or successors, for the crime of which he, she, or they is, are, or shall be indicted.

IV. And be it further enacted, &c. That if any person so to be outlawed for high treason as aforesaid, shall, at the time of such outlawry pronounced, be resident or inhabitant out of the limits of this kingdom of Great Britain, and such person shall, within one year after such outlawry pronounced, yield himself or herself to the Lord Justice-General, Justice-Clerk, or any of the Commissioners of Justiciary in Scotland, he or she shall be at liberty to traverse the indictment on which such outlawry shall be pronounced, and take his or her trial thereupon; and in case he or she shall, on such trial, be found not guilty, by verdict of the jury, he or she shall be clearly acquitted and discharged of the said outlawry, and all penalties and forfeitures for the same, in as large and ample a manner and form as though no outlawry had been made.

By statute 30. of Geo. III. *cap.* 48, it is enacted, that women convicted of treason shall have sentence to be drawn and hanged, instead of being burnt as formerly ; and that in cases of petit treason, they shall be subject to such judgment as is appropriated to cases of murder by the act 25. of Geo. II. *cap.* 37.

The statute 39. and 40. of Geo. III. *cap.* 93, “ for regulating trials for high treason, and misprision of high treason, in certain cases,” declares,

That in all cases of high treason, in compassing or imagining the death of the King, and of misprision of such treason, where the overt act, or overt acts of such treason, which shall be alleged in the indictment for such offence shall be assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered, or his person may suffer bodily harm, the person or persons charged with such offence shall and may be indicted, arraigned, tried, and attainted, in the same manner, and according to the same course and order of trial, in every respect, and upon the like evidence, as if such person or persons stood charged with murder ; and none of the provisions contained in the several acts of the seventh year of King William the Third, and the seventh year of Queen Anne respectively, touching trials in cases of treason and misprision of treason respectively, shall extend to any indictment for high treason in compassing and imagining the death of the King, or for misprision of such treason, where the overt act or overt acts of such treason alleged in the indictment shall be such as aforesaid ; but upon conviction on such indictment, judgment shall be nevertheless given, and execution done, as in other cases of high treason ; any law, statute, or usage, to the contrary notwithstanding.

And the statute 54. of Geo. III. *cap.* 146, “ to al-

“ter the punishment in certain cases of high treason,”
is in the following terms :

“Whereas, in certain cases of high treason, as the law now stands, the sentence or judgment required by law to be pronounced or awarded against persons convicted or adjudged guilty of the said crime, in such cases, is, that they should be drawn on an hurdle to the place of execution, and there be hanged by the neck, but not until they are dead ; but that they should be taken down again, and that when they are yet alive, their bowels should be taken out and burnt before their faces, and that afterwards their heads should be severed from their bodies, and their bodies be divided into four quarters, and their heads and quarters to be at the King’s disposal : And whereas, it is expedient in the said cases of high treason, to alter the sentence or judgment now required by law :” Be it therefore enacted, &c. That in all cases of high treason, in which, as the law now stands, the sentence or judgment ordained by law is as aforesaid, the sentence or judgment to be pronounced or awarded, from and after the passing of this act, against any person convicted or adjudged guilty, shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead ; and that afterwards, the head shall be severed from the body of such person, and the body divided into four quarters, shall be disposed of as his Majesty and his successors shall think fit.

II. And be it further declared and enacted, That in case his Majesty or his successors shall so think fit, his Majesty or his successors, after such sentence or judgment shall be pronounced or awarded, may, by warrant under their sign manual, countersigned by one of his Majesty’s Principal Secretaries of State, declare it to be his or their will and pleasure, and may direct and order, that such person as aforesaid

shall not be drawn, but shall be taken in such manner as in the said warrant shall be expressed, to the place of execution, and that such person shall not be there hanged by the neck, but that, instead thereof, the head shall be there severed from the body of such person whilst alive, and in such warrant may direct and order how and in what manner the body, head, and quarters of such person shall be disposed of; and it shall be lawful for the sheriff, or other person or persons to whom such warrant shall be addressed, and whom it shall concern, to carry the same into execution accordingly.

Erskine, IV. 4. 20.—Hume's Commentaries, I. 524, and 552.

SEDITION.

Sedition is so frequently the beginning of treason, and resembles the higher offence so much in its character and tendency, that the present title seems the fittest place for noticing the statutes on the subject.

Under sedition are comprehended all those practices, whether by deed, word, or writing, or of whatsoever kind, which are suited and intended to disturb the tranquillity of the state, for the purpose of producing public trouble or commotion, and moving his Majesty's subjects to the dislike, resistance, or subversion, of the established government and laws, or settled frame and order of things.

The statute 37. of Geo. III. *cap.* 123, was passed more effectually to prevent the establishment of seditious societies, or the administering of unlawful oaths or engagements towards any mutinous or seditious object.

By the statute 52. of Geo. III. *cap.* 104, it is made felony, and punishable with death without benefit of clergy, to administer any oath or engagement, purporting or intending to bind the person taking the same to commit any treason or murder, or any felony punishable by law with death. To take such oath or engagement, not being compelled thereto, subjects the person to transportation for life, or for such term of years as the court shall adjudge.

The statute 39. of Geo. III. *cap.* 79, “ for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices,” is directed against the Societies of United Englishmen, United Scotsmen, United Irishmen, United Britons, The London Corresponding Society, and all other corresponding societies, as being unlawful combinations against the government of the king, and the peace and security of his subjects. All societies are also declared unlawful, whereof the members take any of the oaths prohibited by the statute 37. of Geo. III, *cap.* 123, or any oath or test not authorised by law ; or which have any members, committees, &c. not known to the society at large, or which act in separate branches, or wherein the names of all the members are not entered in regular books. The members of such societies are declared to be guilty of unlawful combination, are liable to be proceeded against summarily, before one justice of peace, and, if convicted by the oath of one witness, may be committed to gaol or correction-house for three months, or fined in twenty pounds, as the justice shall see cause.

Offenders may also be tried before the high court, or circuit courts of justiciary, by indictment, and, upon conviction, may be transported for seven years, or imprisoned for two. All lodges of freemasons are excepted from the act. It was revived by 41. of Geo. III. *cap.* 30 ; and explained and amended, so far as relates to printers and publishers, by 51. of Geo. III. *cap.* 65.

The statutes 57. of Geo. III. *cap.* 19, and 60. of Geo. III. *cap.* 6, “ for more effectually preventing seditious meetings and assemblies,” appear to be temporary enactments.

The statute 6. of Geo. IV. *cap.* 47, “ for restricting the punishment of leasing-making, sedition, and blasphemy, in Scotland,” is in the following terms :

“ I. Whereas it is expedient that the punishment of the crimes of leasing-making, sedition and blasphemy, as known in the law of Scotland, should be restricted ; and that these crimes should be punished in the same manner as such crimes would be punished if committed in England ;” Be it therefore enacted, &c. That if any person shall henceforth be convicted of any of the aforesaid crimes, such person shall be liable to be punished only by fine or imprisonment, or both, at the discretion of the court before which such person shall be tried.

II. And be it enacted, That if any person after being so convicted shall offend a second time, and be thereof lawfully convicted, such person may, on such second conviction, be adjudged, at the discretion of the court, either to suffer the punishment of fine or imprisonment, or both, or to be banished from the united kingdom, and all other parts of his Majesty’s dominions, for such term of years as the court in which such conviction shall take place shall order.

III. And be it further enacted, That in case such person

so adjudged to be banished as aforesaid, shall not depart from the united kingdom within thirty days after the pronouncing of such sentence as aforesaid, for the purpose of going into such banishment as aforesaid, it shall and may be lawful to and for his Majesty to convey such person to such parts out of the dominions of his said Majesty, as his said Majesty, by the advice of of his privy council, may direct.

IV. And be it enacted, That if any offender, who shall be so sentenced to be banished in manner aforesaid, shall, after the end of forty days from the time such sentence has been pronounced, be at large within any part of the united kingdom, or any other part of his Majesty's dominions, without some lawful cause, before the expiration of the term for which such offender shall have been so adjudged to be banished as aforesaid, every such offender being so at large as aforesaid, being thereof lawfully convicted, shall be transported to such place as shall be appointed by his Majesty, for any term not exceeding fourteen years.

V. And be it enacted, That so much of an act passed in the thirty-ninth year of the reign of his Majesty King George the Third, intituled, An act to extend the bail to be given in cases of criminal information, as authorises the Court of Justiciary to extend the bail beyond the sums specified in that act, in all cases where any person shall in future be imprisoned on a charge of being guilty of the crime of sedition, shall be, and the same is hereby repealed.

Erskine, IV. 4. 29.—Hume's Commentaries, I. 544.

TURNPIKE. See HIGHWAYS.

USURY.

By this term is meant the taking or stipulating a higher rate of interest for money lent than is allowed by law. The statutory penalties are incurred by any bargain or device whereby more than legal interest is agreed to be paid, although no usurious profit should have been received when the transaction is challenged.

Formerly the rate of interest was fixed by one statute, and the description and punishment of usury, (which is just a violation of such statute,) by another. Both of these objects are now provided for by the same statute.

The following acts regulated the rate of legal interest in former times :

By the act 1587, *cap.* 52, it was fixed at 10 *per cent.*

_____ 1633, _____ 21, _____ 8 *per cent.*

_____ 1649, _____ } _____ 6 *per cent.*

_____ 1661, _____ 49, }

_____ 12. of Anne, *cap.* 16, _____ 5 *per cent.*

The penalties of usury formed the subject of several statutes, of which the following are the most important.

By the act 1594, *cap.* 222, the borrower was to be discharged of his debt, if he revealed the usury ; if another person revealed it, the claim of debt was to accrue to the informer.

By the act 1597, *cap.* 247, the penalty was a confiscation of the sum and ordinary interest in all cases to the King, along with restitution of the usurious profits to the debtor, if he concurred in the prosecution.

The act 1600, *cap.* 7, in explanation of former acts anent usury, declares,

That in all actions already intended, dependand, or hereafter to be intended against contraveiners of the saids acts, litiscontestation being made therein, by admitting of the summons to probation, it shall be lesome to prove the saids summons and contraveining of the saids acts, or any of them, anent the taking of unlawfull and exorbitant profite for summes of money, by writte or eath of partie, receaver of the said unlawfull profite, and be the witnesses insert in the said securitie, made for the saids summes, without receaving of the eath of the partie, giver of the saids unlawfull profites, for eschewing of all occasion of perjurie, whilk might be suspected to proceed thereupon.

And the statute 1621, *cap.* 28, is in the following terms :

Our Sovereigne Lord, and Estates of this present Parliament, considering, that notwithstanding usurie, and taking unlawful annuel, more than ten for each hundreth, hath been by sundry actes of before discharged and forbidden ; yet it hath been usual, by ane evill and corrupt custome, to take or retaine the annuelrent, the time of the borrowing the money, which in effecte is eleven of each hundredth at least ; for avoyding whereof, statutes and ordains, That no person who lendes or gives out money, and receaves annuel therefore, shall retaine the time of the lending, exact, crave, or receive, from their debtors, the annuel of their lent summes, until the tearme of payment appoynted by their bandes be first come. And it shall be lawful, at the time of lending of money and making of bands, to adde the annuel unto the principal sum : Providing alwayes, neither principal nor annuel be exacted or craved, before the tearme of payment appoynted to the said band ; and the contraveiners of this present statute shall be punished as unlawful usurers.

The statute 12. of Queen Anne, *cap.* 15, is in these words :

Whereas the reducing of interest to ten, and from thence to eight, and thence to six in the hundred, hath, from time to time, by experience been found very beneficial to the advancement of trade, and improvement of lands : And whereas the heavy burden of the late long and expensive war hath been chiefly borne by the owners of the land of this kingdom, by reason whereof they have been necessitated to contract very large debts, and thereby, and by the abatement in the value of their lands, are become greatly impoverished : And whereas, by reason of the great interest and profit which hath been made of money at home, the foreign trade of this nation hath of late years been much neglected, and at this time there is a great abatement in the value of the merchandizes, wares, and commodities of this kingdom, both at home and in foreign parts, whither they are transported : And whereas, for the redress of these mischiefs, and the preventing the increase of the same, it is absolutely necessary to reduce the high rate of interest of six pounds in the hundred pounds for a year to a nearer proportion with the interest allowed for money in foreign states ; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That no person or persons whatsoever, from and after the said nine and twentieth day of September, in the year of our Lord 1714, upon any contract, which shall be made from and after the said nine and twentieth day of September, take, directly or indirectly, for loan of any monies, wares, merchandize, or other commodities whatsoever, above the value of five pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or

for a longer or shorter time; and that all bonds, contracts, and assurances whatsoever, made after the time aforesaid, for payment of any principal, or money to be lent or covenanted to be performed upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred, as aforesaid, shall be utterly void; and that all and every person or persons whatsoever, which shall after the time aforesaid, upon any contract to be made after the said nine and twentieth day of September, take, accept, and receive, by way or means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any wares, merchandize, or other thing or things whatsoever, or by any deceitful way or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, of and for their money or other thing, above the sum of five pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter term, shall forfeit and lose for every such offence the treble value of the monies, wares, merchandizes, and other things, so lent, bargained, exchanged, or shifted.

And be it further enacted by the authority aforesaid, That all and every scrivener and scriveners, broker and brokers, solicitor and solicitors, driver and drivers of bargains for contracts, who shall, after the said nine and twentieth day of September, take or receive, directly or indirectly, any sum or sums of money, or other reward or thing for brokerage, soliciting, driving, or procuring the loan, or forbearing of any sum or sums of money, over and above the rate or value of five shillings for the loan, or forbearing of one hundred pounds for a year, and so rateably, or above twelvepence, over and above the stamp-duties, for making or renewing of the bond or bill for loan, or forbearing thereof, or for any counterbond or bill concerning the same, shall forfeit for every such offence twenty pounds, with costs of suit, and suf-



fer imprisonment for half a year ; the one moiety of all which forfeitures to be to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to him or them that will sue for the same in the same county where the several offences are committed, and not elsewhere, by action of debt, bill, plaint, or information, in which no essoign, wager of law, or protection, shall be allowed.

In regard to prosecutions for usury, no time is limited by this act of Queen Anne, within which they require to be instituted. In England, action on this and some other penal statutes must be brought within one year from the date of this offence, if brought at the instance of a private party ; and within two years, if at the instance of his Majesty. This has been acted upon in Scotland, as the rule in the following cases : *Walker v. Allan*, 30. June 1807, *Morison v. Connel*, 24. June 1808, and *Meal v. Thom*, 27. Nov. 1810. But it is a limitation applicable only to the suit for treble penalties, and not to that for voiding the usurious transaction.

Hume on Crimes, I. 499.—Erskine, IV. 4. 76.

VAGABONDS AND VAGRANTS. See POOR.

VITIOUS INTROMISSION. See REPRESENTATION.

WARDHOLDING.

Under the original military feudal tenure, the vassal's personal services were the return for the grant. On the vassal's death, if the heir was a minor, the superior was thus deprived of his vassal's services for a time. In lieu of these, he got the whole rents of the heir's estate, and the guardianship of his person, while under age. Afterwards, however, this casual return was converted into a payment of money fixed by the *Reddendo* of the charter, which constituted the tenure of wardholding.

The statute 20. of Geo. II. *cap.* 50, declares,

That the tenure of lands or heritages in Scotland by wardholding, whether simple or taxed ward, and the casualties consequent upon the same by ward, marriage and recognition, be taken away and discharged, and they are hereby taken away and discharged, from and after the 25th day of March in the year 1748; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

II. And be it enacted, That all tenures of any lands or heritages in Scotland, that are now held, or liable to be held of his Majesty by wardholding, whether simple or taxed ward, are hereby enacted to be turned into blanch holding, for payment of one penny Scots at the feast or term of Whitsunday yearly, *si petatur tantum*; and as often as such lands or heritages shall fall in non-entry, the same shall be no longer subject or liable to the annual payment of the new extent or retour duty of such lands or heritages, but instead thereof shall be subject and liable to the annual pay-

ment of the sum of one pound Scots for every one hundred pound Scots of the valued rent of such lands or heritages, according to which they are now liable to pay the respective proportions of his Majesty's cess or land tax, and so proportionably for a greater or lesser quantity than one hundred pound Scots valuation.

III. And in order to ascertain the quantum of such non-entry duty, it is hereby enacted, That from and after the said twenty-fifth day of March, in all services upon the brief of mortancestry of any heir or heirs in such lands or heritages as aforesaid, the retour, over and above the setting forth the old and new extent of the lands or heritages in such manner as has been heretofore practised, shall further set forth and express the valuation of such lands and heritages as aforesaid, and the proportion above mentioned of such valuation, and no more, shall be the non-entry duty of such lands or heritages, preceding the citation in the general declarator of non-entry.

IV. And be it further enacted, That all tenures of any lands or heritages in Scotland, that are now held, or liable to be held ward of any subject superior, whether simple or taxed ward, are hereby enacted to be turned into feuholding, for payment of a certain rent or feu-duty in money, victual, cattle, or otherwise, yearly, in place of the said casualties of wardholding hereby discharged, and of all services; and shall be so construed, adjudged and deemed to be from the said 25th day of March and for ever thereafter.

V. And in order to ascertain the quantum of the feu-duty to be paid yearly, after the said 25th March, by the tenants or vassals of the said lands and heritages heretofore held ward to the superiors thereof, be it further enacted, &c. That it shall be lawful for the Court of Session in Scotland, and they are hereby empowered and required to take into their consideration the difference in value to the vassal of the change of their holdings or tenures from ward

to feu hereby enacted, and what constant annual rent or feu-duty, payable to the superior, will be a reasonable satisfaction or recompence for that value or difference, and thereupon to make and publish an act of sederunt, which shall be in force, and observed by all the subjects in that part of the kingdom, unless or until the same shall be altered by a future act of Parliament; and according to the rules prescribed in such act of sederunt, it shall and may be lawful for all and every the superiors and vassals, or parties interested, to settle and adjust betwixt themselves the feu-duties to be hereafter payable in place of the tenures hereby abolished or altered; and in case of difference arising, it shall and may be lawful for the said Court of Session, upon application made to them by bill or petition, in behalf of or by any subject superior of such lands or heritages, or by the vassals or proprietors thereof, summarily to determine the quantum of the said annual feu-duty, such as the court shall judge to be a reasonable and equitable recompence to the superior for the change of the holding hereby enacted, after having heard both parties, or summoned the party called the defender upon twenty-one days' notice; and whatever annual payment the said Court of Session shall so modify, shall be the feu-duty payable for such lands and heritages as aforesaid, to the respective superiors thereof, and all and singular their heirs and successors, and that yearly, at Whitsuntide, from and after the said 25th day of March, when the change of holding is hereby enacted to take place, in the same manner as if feu-charters had been granted of that date to the respective vassals upon their resignation, containing such change of holding, for payment of the annual feu-duties so to be modified.

VI. Provided always, That until such modification shall be made by the Court of Session, the vassal shall not be liable to incur any forfeiture or irritancy for non-payment of the feu-duties; and such modification being made, shall be in-

serted as the feu-duty payable for such lands or heritages in the future renovations of the investiture thereof by the present vassals, their heirs or successors.

VII. Provided also, That in every case where the whole lands or estate so held ward, on the said 25th day of March, shall then stand provided in liferent to any person or persons, in such manner as by the laws of Scotland now in being would be exclusive of the casualty of ward, such liferenter or liferenters, during the continuance of his, her, or their rights respectively, shall not be subject to pay the annual feu-duties to be modified as aforesaid; and the same, during the subsistence of such liferent right, shall be suspended, and shall commence and become payable to the superior at the first term of Whitsunday after the determination of such liferent right, and in every case where such liferent right be payable to the superior by the fiar or proprietor, out of such parts of the lands or estate as shall not be liferented.

VIII. Provided also, That the infeftments now standing in the persons of any vassal in Scotland holding their lands or other heritages ward, shall remain good and valid, to all intents and purposes whatsoever, so long as the persons now infeft shall retain the same, or not be denuded thereof; and they shall notwithstanding, by virtue of this present act, be no longer subjected to the casualties hereby discharged, but shall be subject to pay the annual blanch or feu duties respectively, hereby provided to be payable in place of those casualties.

IX. And be it further enacted, &c. That no tenure of any lands or heritages by wardholding shall hereafter be created by his Majesty, his heirs or successors, or by any other superior or proprietor of lands or other heritages in Scotland.

X. "And whereas there are certain lands in Scotland held " by the tenure of feu *cum maritagio*, or with clauses *de non*

“ *alienando sine consensu superiorum* ;” it is also hereby enacted, &c. That in all time coming, from and after the said twenty-fifth day of March, the casualty of marriage consequent upon such holding, and all such prohibitory clauses restraining the power of alienation, be taken away and discharged; and it shall be lawful, in like manner as is hereinbefore directed in the case of wardholding, for the respective subject superiors, or vassals in lands and heritages that are held feu *cum maritagio*, or with such prohibitory clauses as aforesaid, to apply to the Court of Session to modify such additional feu-duty by the vassal, as they shall judge a reasonable recompence to the superior for such casualty of marriage or prohibitory clauses as aforesaid, hereby taken away and discharged.

XI. “ And whereas the casualties of single and liferent escheat consequent upon the process competent by the law of Scotland for recovering payment of civil debts or performance of obligations, have, by experience, been found highly rigorous, and liable to be abused;” be it therefore enacted, &c. That from and after the said twenty-fifth day of March, the casualties of single escheat heretofore incurred by horning and denunciation of the debtor in any civil debt or obligation, and of liferent escheat heretofore incurred by such debtor so denounced continuing for a year and day unreturned or unrelaxed, be, and the same are hereby taken away and discharged for ever, and that from and after the said twenty-fifth day of March, no single escheat or liferent escheat shall become forfeited, or be consequent upon any such process as is before mentioned, any law, custom, or usage to the contrary notwithstanding.

XII. “ And whereas the methods of procuring entry by heirs or singular successors, or purchasers of land in Scotland, that are held of subject superiors, heretofore practised, are tedious and expensive;” be it therefore enacted, &c. That from and after the said twenty-fifth day of March

it shall be lawful and competent for any person, who shall be duly served and retoured heir to any of his predecessors in any lands or heritages in Scotland, and to any person who shall purchase or acquire such lands or heritages from the former proprietor or vassal, who was duly vested and seised therein, and who shall obtain from such vender or former proprietor a disposition or conveyance, containing a procuratory of resignation in favour of such purchaser or disponent, to apply to the ordinary on the bills in the Court of Session for the time being, praying a warrant for letters of horning to charge the superior of whom such lands or heritages were respectively held, to receive or grant new infeftment to such heir or purchaser respectively; and upon production to the Lords of Session of a special retour of the petitioner or party so applying in any such lands or heritages, or upon production of a disposition or conveyance bearing a procuratory of resignation in favour of such petitioner, it shall and may be lawful for the said Lords of Session, and they are hereby authorised and required, to grant warrant for letters of horning upon fifteen days, to charge the superior or superiors in the lands contained in such special retour or procuratory of resignation, to receive or grant new infeftment to such heir, purchaser, or disponent, respectively.

XIII. Provided always, That no superior shall be obliged to give obedience to such charge, unless the charger at same time shall pay or tender to him such fees or casualties as he is by law entitled to receive upon the entry of such heir or purchaser; and that it shall be lawful for every such superior to shew cause why he ought not to be compelled to give obedience to such charge, by offering a bill of suspension in the usual manner to the court.

Sections XIV. XV. XVI. & XVII. have already been quoted in the title "Entail," Vol. I. p. 397.

XVIII. "And whereas the ancient usage of the vassals of

“the King and other subject superiors, being obliged to give
“suit and presence, or to appear at head courts at certain
“times of the year, has of a long time been useless, and ought
“not to be continued;” be it therefore enacted, &c. That
from and after the said twenty-fifth day of March, no proprietor of lands in Scotland holding of the King, or of any subject superior, shall be obliged to attend, appear, and give suit and presence by himself or his procurator, at any head court, or be liable to any fine or penalty for default of attendance at such head court, any law, charter, or usage to the contrary notwithstanding.

XIX. Provided always, That nothing herein contained shall exempt any proprietors of lands, being vassals of the King, or any subject superior, from attendance at any court to which he is subject, being lawfully and specially summoned for that effect, to serve as a jurymen upon trials, or for any other lawful purpose whatever.

XX. Provided also, That nothing herein contained shall derogate from the powers now competent by law to the freeholders assembled at their Michaelmas head court which it shall be lawful to hold, and for the freeholders to act and proceed as formerly, any thing herein contained to the contrary notwithstanding.

XXI. “And whereas it hath been frequently practised in
“Scotland to let lands to tenants or tacksmen, reserving or
“expressing over and above the certain rents and duties payable for the same services used and wont, or services indefinitely, or other general words of the like nature, without
“specifying or ascertaining the same, which practice is liable
“to be abused, is productive of disputes between landlord
“and tenant, and subject to divers inconveniences;” be it therefore enacted, &c. That from and after the first day of July in the year of our Lord 1747, no tenant or tacksman of any lands or heritages in Scotland, by virtue of any lease or tack which shall be made in writing, or by verbal agreement,

tacit relocation, or otherwise, after the said first day of July, or by virtue of the prorogation of any lease of tack made before the said first day of July, or any assignee of any such lease or tack, shall be obliged or liable to perform any services whatsoever to his heritor or landlord, other than such as shall be expressly and particularly reserved and specified, and the number and kinds thereof enumerated and ascertained, in some written lease or tack, or by some agreement made in writing, and signed by the parties thereto, or some persons authorised by them, any former law or usage to the contrary notwithstanding.

XXII. Provided always, That nothing herein contained relating to services to be performed by any tenant or tacksmen after the said first day of July shall extend, or be construed to extend to any services by law or custom due to mills, or any matter or thing relative thereto.

Act of Sederunt, 8. February 1749.

Erskine, II. 4. 3 ; and II. 5. 24.

WAREHOUSING ACT.

The statute 6. of Geo. IV. *cap.* 112, “for the warehousing of goods,” has been explained in a work formerly referred to, Mr Hume’s Consolidated View of the Laws of Customs, p. 309.

Bell’s Commentaries, I. 186. — Erskine, III. 3. 8. Note.

WARNING. See REMOVING OF TENANTS.

WEAVERS.

In the title "*Artificers*," (Vol. I. p. 70,) the statute 6. of Geo. IV. *cap.* 129, has been quoted, against combinations of workmen to raise the rate of wages. And, in the title "*Justice of Peace*," (Vol. II. p. 65,) notice has been taken of the statute 4. of Geo. IV. *cap.* 34, "to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers and others."

Justices of the peace are required, in like manner, to adjust all disputes between weavers of cotton manufacture and their masters, in regard to the price of their work, the quality of the warp, and the utensils and materials of trade, &c. The act 43. of Geo. III. *cap.* 151, "for preventing and settling disputes which may arise between masters and weavers engaged in the cotton manufacture in Scotland, and persons employed by such weavers, and persons engaged in ornamenting cotton goods by the needle," directs that, on occasion of such complaints, the parties shall go before a justice or justices of the peace, who shall appoint two referees, one on the part of the master, his foreman or agent, and another on the part of the weaver, each party having a right of two peremptory challenges. These referees must be persons skilled in the particular trade, and their award shall settle the dispute. If either or both of the referees be challenged or decline to act, or if, having accepted the office, they shall differ

in opinion, the justice or justices may make a second nomination of two referees, who, or either of them, shall report their or his determination in the complaint to the justice or justices ; which determination shall be final, and not subject to the review of any court.

WEIGHTS AND MEASURES. See BURGH
ROYAL.

WITCHCRAFT.

The statute 1563, *cap.* 73, denounced the punishment of death against all who practised witchcraft, sorcery, or necromancy, or who consulted such as used these arts.

But the statute 9. of Geo. II. *cap.* 5, repeals the former, and declares, " That no prosecution, suit, or proceeding shall be commenced or carried on against any person or persons for witchcraft, sorcery, inchantment, or conjuration, or for charging another with any such offence in any court whatsoever in Great Britain."

Hume's Com. I. 578.—Erskine, IV. 4. 18.

WRONGOUS IMPRISONMENT.

The statute 1701, *cap.* 6, commonly called *the libe-*

ration act, “ for preventing wrongous imprisonment, “ and against undue delays in trials,” is in the following terms :

Our Sovereign Lord, considering it is the interest of all his good subjects, that the liberty of their persons be duly secured : And that it is declared by the Claim of Right, That the imprisonment of persons, without expressing the reasons thereof, and delaying to put them to trial, is contrary to law : Therefore, his Majesty, with advice and consent of the Estates of Parliament, statutes, enacts, and ordains, That all informers shall sign their informations, and that no person shall hereafter be imprisoned for custody, in order to trial for any crime or offence, without a warrant in writ, expressing the particular cause for which he is imprisoned ; and of which warrant, the messenger or executor thereof, before imprisonment, or the keeper of the prison, receiving the same, is hereby ordained to give a just double immediately under his hand to the prisoner himself, for the end after specified ; declaring, That all warrants for imprisonment, on the account foresaid, either proceeding upon informations not subscribed, or not expressing the particular cause, shall be void and null, and the judge or officer of the law, and all others whatsoever subscribing the same, and the executor or keeper of the prison, who shall receive and detain the person so wrongously ordered to be imprisoned, or refusing a double as said is, shall be liable in the punishment of wrongous imprisonment hereafter exprest : And to the effect that persons who are, or shall be imprisoned for custody, in order to trial, may not be wrongously delayed and ordained, his Majesty, with advice and consent foresaid, statutes and ordains, That all crimes not inferring capital punishment, shall be bailable : And for clearing and establishing the method of finding bail in such cases, either before or after imprisonment, his Majesty, with advice and consent foresaid,

statutes and ordains, That it shall be lawful to the prisoner, or person ordered to be imprisoned, to apply to the committer, or Commissioners of Justiciary, or other judge competent, for cognition of the crime, and offer to find sufficient caution, that he the said prisoner, or person ordered to be imprisoned, shall appear and answer to any libel that shall be offered against him, for the crime or offence wherewith he is charged, or at any time within the space of six months ; and that under such a penalty as the said committer, or the Lords of Justiciary, or other judge competent, shall modify and appoint: And that upon the said application, the said committer, or Lords of Justiciary, or other judge competent, shall first cognosce whether the crime be capital or not, in order to the finding bail allenary ; and if foundailable, then he or they shall be obliged to modify the sum for which the bail is to be found, within twenty-four hours after the said petition is presented to him or them respectively, the sum for which the bail is to be found not exceeding six thousand merks for a nobleman, three thousand merks for a landed gentleman, one thousand merks for any other gentleman and burgess, and three hundred merks for any other inferior person, under the pain of wrongous imprisonment ; and upon the parties finding sufficient bail, under the penalty modified at the sight of the said judge or judicatory *respectively*, and delivering or offering the same to the clerk, and instruments taken upon the delivery, or offer of sufficient caution, the said committer or judicatory competent shall order his liberation, or discharge his imprisonment, if not incarcerate, under the penalty of wrongous imprisonment: As likewise, that sufficient bail, under the penalty modified, being offered to the judge or magistrate to whom the execution of the warrant is directed, the said judge or magistrate shall be obliged, and is hereby appointed and ordained to accept of the foresaid bail, and set the prisoner at liberty, under the like penalty of wrongous

imprisonment: And his Majesty, with advice and consent foresaid, further statutes and ordains, That upon application of any prisoner for custody in order to trial, whether for capital or bailable crimes, to any of the Lords of Justiciary, or other judge or judicatory competent for judging the crime or offence for which he is imprisoned, and the said prisoner his producing the said double of the warrant of his imprisonment under the keeper's hand, the said judge or judicatory competent, under the pain of wrongous imprisonment, are hereby ordained, within twenty-four hours after the said application and petition is presented to him or them, to give out letters or precepts direct to messengers for intimating to his Majesty's advocate or procurator-fiscal, and the party appearing by the warrant to be concerned, if any be within the kingdom, to fix a diet for the trial within sixty days after the intimation; certifying his Majesty's advocate or procurator-fiscal, and the said party concerned, that if they failzie, the prisoner shall be discharged and set at liberty without delay; for doing whereof, the said judge or judicatory competent are hereby expressly warranted, and strictly required and ordained to do the same, under the penalty foresaid, unless the delay be upon the prisoner's petition or desire; and the diet of the trial being prefixed, the magistrates of the place, or keeper of the prison, shall then be obliged to deliver the prisoner to a sufficient guard to be provided by the judge, his Majesty's advocate, or procurator-fiscal, that the prisoner may be sisted before the judge competent, and his Majesty's advocate, or procurator-fiscal, shall insist in the libel, and the judge put the same to a trial, and the same shall be determined by a final sentence within forty days, if before the Lords of Justiciary, and thirty days if before any other judge. And if his Majesty's advocate or procurator-fiscal do not insist in the trial at the day appointed, and prosecute the same to the conclusion as aforesaid, his Majesty, with advice foresaid, statutes and ordains, That the

diet shall then be *simpliciter* deserted, and the prisoner immediately liberate from his imprisonment for that crime or offence; and if no process be raised and executed within the time allowed, or in case of not insisting at the diet, and bringing the process to a conclusion within the foressaid space, it shall be lawful to the prisoner to apply to the Justice-General, Justice-Clerk, or any of the Lords of Justiciary, or judge competent *respective*; and upon his application, and instructing that the limited time by law for insisting or concluding the process is elapsed, and instruments taken thereupon, the said Justice-General, Justice-Clerk, Lords of Justiciary, and judge competent, shall be obliged, within twenty-four hours, to issue out letters or precepts direct to messengers, for charging the magistrates, or keepers of the prison where the prisoner is detained, for setting him at liberty, under the penalty of wrongous imprisonment, in case of delay or refusal to grant the said letters or precepts, or to set him at liberty after the charge, without prejudice to the keeper of the prison, as to his dues in all cases of liberation as formerly before the making of this act; and the prisoner being liberate in manner foressaid, it shall not be lawful to put or detain him in prison for the same crime, under the penalty of wrongous imprisonment, in case his former liberation be made known to the committer before the warrant be granted; or in case he be detained after his former imprisonment is sufficiently instructed to the keeper of the prison, who, upon production of the former warrant of his liberation from his imprisonment for the same crime, shall be obliged to set the prisoner forthwith at liberty, unless there be new criminal letters raised before the Commissioners of Justiciary, and duly execute against the said prisoner; in which case, it is hereby declared lawful to imprison him of new, though the said letters be raised for the same crime for which he was formerly incarcerate, and it shall be lawful to apprehend and secure him at the time of executing the said letters, or at any

time thereafter before trial, and to detain him till his trial, or that he be set at liberty in the due course of law. And his Majesty, with advice and consent foresaid, ordains his Majesty's advocate to insist in the said libel, and prosecute the same to a final sentence within forty days after the said prisoner is of new incarcerated thereupon, unless the delay be upon the application, or at the desire of the prisoner; wherein if the King's advocate failzie, the diet is to be deserted *simpliciter*, and the prisoner ordained to be set at liberty from the said imprisonment. And the process not being duly prosecute as aforesaid, and the diet thereupon deserted, his Majesty, with advice and consent foresaid, declares the party imprisoned a second time as aforesaid to be for ever free from all questions or process for the foresaid crime or offence; providing always, That in case of imprisonment for treason, the prisoner shall not have access to apply for prefixing of a diet for process for forty days after his imprisonment, which are hereby allowed for preparing of the process; after elapsing of which time, the Lords of his Majesty's Privy Council, or Lords of Justiciary, or any of them, are hereby required, upon the application of the prisoner, to issue forth precepts as in other cases. And in case of not insisting, or prosecuting the process as aforesaid, the prisoner shall be liberate upon sufficient bail, to compear at any time when called, within twelve months, for his good and peaceable behaviour in the mean time, the said bail not exceeding the double of the bail in other crimes: Declaring, That the liberation provided by this present act, is only to be understood from imprisonments for the causes foresaid, and without prejudice of all personal diligence, or imprisonments for payment of debts, or upon sentence, or for any other causes than these above expressed, in the same way and manner as was competent before the making hereof: And siklike, it is hereby provided and declared, That this present act is noways to be extended to colliers or salters, and the same is

without prejudice or derogation from former laws, requiring bail to be given by chieftains, landlords, or others in the Highlands; reserving likewise commitments, imprisonments, and the prosecution of thefts, robberies, and depredations in the borders and Highlands, according to the former laws and customs, any thing in this act notwithstanding; without prejudice also to inferior magistrates, judges, or justices of peace and constables, to take security of persons for their good behaviour, and keeping of the peace, as they have been in use formerly to do, or to imprison in order to trial, for indignities done to the said inferior magistrates, judges, or justices of peace; or to imprison parties disobedient and contumacious to church censures, vagabonds, and masterful beggars; or to imprison for riots, bloods, and batteries, or persons found acting in tumults; or for drunkenness, Sabbath breaking and swearing, uncleanness, pickeries and thieving: For which cases, or any of them, it shall be lawful to proceed as formerly, the person imprisoned having always his relief by offering bail, and demanding a trial as above: As also providing, That, in the case of imminent or actual invasion, rebellion, or insurrection, commitments may proceed, by order of the Privy Council, or any five of their number, upon suspicion of accession thereto, without being liable to any penalty for the said commitment, the person imprisoned having always his relief for trial or liberation as aforesaid: And his Majesty, with consent foresaid, statutes and ordains, That the pain of wrongous imprisonment shall be six thousand pound for a nobleman, four thousand pound for a landed gentleman, two thousand pound for every other gentleman and burgess, and four hundred pound for other persons: And if any prisoner be detained after elapsing of the respective days in manner above prescribed, for obtaining his liberty, the judges, magistrates, or others wrongously detaining, shall be liable in the pains following, viz. Of one hundred pound for each day for a nobleman, sixty-six pound

thirteen shilling four pennies for a landed gentleman, thirty-three pound six shilling eight pennies for other gentlemen and burgesses, six pound thirteen shilling four pennies for other persons: And further, shall lose their offices, and be incapable of public trust, by and attour the pains above specified, and the penalty to belong to the party imprisoned, and process to be competent for the same before the Lords of his Majesty's Privy Council, or before the Lords of Council and Session, to be discussed by them summarily, without abiding the course of the roll: And it is hereby declared, That the above penalties shall not be modified by any power or authority whatsoever: And his Majesty, with advice and consent foresaid, extends this act for preventing of wrongous imprisonment to the case of all confinements, not either consented to by the party, or inflicted after trial by sentence: And further discharges all close imprisonments beyond the space of eight days from the commitment, under the pains of wrongous imprisonment above set down: As also, That no person be transported forth of this kingdom, except with his own consent given before a judge, or by legal sentence; certifying judges and magistrates, and all others who shall give order otherwise for the said transportation, as likewise, all such who shall transport any person without a lawful warrant from a judge or magistrate, that he shall be liable to the foresaid pains of wrongous imprisonment, as also of being deprived, and declared incapable of all public trust. And his Majesty, with advice and consent foresaid, enacts and declares, That action and process for wrongous imprisonment shall prescribe, if not pursued within three years after the last day of the wrongous imprisonment; and process being once raised, the same shall prescribe, if not insisted in yearly thereafter. And it is hereby statute and ordained, by advice and consent foresaid, That no member of Parliament attending, shall be imprisoned or confined, upon any account whatsoever, during a session of Parliament,

without a warrant of Parliament, reserving to the high constable and marischal their privileges and jurisdictions in the time of Parliament as formerly. And also providing, That if any member shall happen to commit a capital crime, or if there be a manifest hazard of the peace, any magistrate may attach for securing of the person or the peace, and deliver the person to the custody of the high constable, in order to the Parliament's cognition the next sederunt.

Hume, II. 96.—Erskine, IV. 4. 31.

DECISIONS.

Fife, 29. July 1762, Mor. 11750.—Duncan, 21. Jan. 1823, S. & D.—Andrew v. Murdoch, 20. June 1806, Dict. Ap. No. 5, *voce Wrongous Imprisonment*. — Andrew, 12. June 1823, S. & D.—Rae Mure, 10. July 1811, F. C.—Gibson, 18. June 1817, *ib*.—Walker, 21. Nov. 1822, S. & D.—Donald, 5. Dec. 1822, *ib*.

GENERAL INDEX.

VOLUME FIRST.

	Page.
ACT OF PARLIAMENT.	
Act 33. of Geo. III, cap. 13, - - - - -	1
ADJUDICATION.	
Act 1469, cap. 37, - - - - -	2
1621, cap. 6, - - - - -	ib.
— cap. 7, - - - - -	6
— cap. 8, - - - - -	ib.
1661, cap. 31, - - - - -	7
— cap. 62, - - - - -	8
1663, cap. 10, - - - - -	11
— cap. 22, - - - - -	ib.
1669, cap. 18, - - - - -	12
1672, cap. 19, - - - - -	13
Illustrations, - - - - -	16
ADMIRAL.	
Act 1609, cap. 15, - - - - -	18
1681, cap. 16, - - - - -	19
5. of Queen Anne, cap. 7, - - - - -	20
1. and 2. of Geo. IV, cap. 39, - - - - -	21
Illustrations, - - - - -	26
ADULTERY.	
Act 1551, cap. 20, - - - - -	ib.
1563, cap. 74, - - - - -	27

	Page.
Act 1581, cap. 105,	27
1592, cap. 117,	28
1600, cap. 20,	29
Illustrations,	ib.

ADVOCATE.

Act 1587, cap. 38,	30
— cap. 90,	31
Illustrations,	ib.

ADVOCATION.

Act 1663, cap. 9,	32
50. of Geo. III, cap. 112,	ib.
Illustrations,	33

ALIENS.

Act 1558, cap. 65 and 66,	33
1661, cap. 39,	34
1669, cap. 7,	ib.
1681, cap. 12,	35
7. of Queen Anne, cap. 4, § 3,	ib.
4. of Geo. II, cap. 21,	36
13. of Geo. III, cap. 21,	39
16. of Geo. III, cap. 52,	ib.
Illustrations,	41

ALIMENT OF POOR PRISONERS.

Act 6. of Geo. IV, cap. 62,	41
Illustrations,	44

ANN OR ANNAT.

Act 1672, cap. 13,	44
50. Geo. III, cap. 84, § 16,	45
Illustrations,	46

	Page.
ANNUALRENT.	
Act 1621, cap. 20,	46
1681, cap. 21,	47
1696, cap. 36,	ib.
1686, cap. 2,	ib.
Illustrations,	48

APPARENT HEIRS.	
Act 1540, cap. 106,	50
1621, cap. 27,	51
1661, cap. 24,	ib.
1695, cap. 24,	52
1696, cap. 11,	55
Illustrations,	56

APPEAL.	
Act 20. of Geo. II, cap. 43,	56
31. of Geo. II, cap. 42,	59
54. of Geo. III, cap. 67,	ib.
48. of Geo. III, cap. 151,	ib.
6. of Geo. IV, cap. 120, § 25, and 26,	61
Illustrations,	62

ARRESTMENT.	
Act 1581, cap. 118,	64
1617, cap. 17,	66
1661, cap. 51,	ib.
54. of Geo. III, cap. 137, § 2,	ib.
Illustrations,	67

ARTIFICERS.	
Act 5. of Geo. I, cap. 26,	69
23. of Geo. II, cap. 13,	ib.

	Page.
Act 14. of Geo. III, cap. 71, - - - -	69
22. of Geo. III, cap. 60, - - - -	70
6. of Geo. IV, cap. 129, - - - -	ib.

BANK NOTES.

Act 5. of Geo. III, cap. 49, - - - -	78
55. of Geo. III, cap. 184, - - - -	82
41. of Geo. III, cap. 39, - - - -	83
41. of Geo. III, cap. 57, - - - -	87
45. of Geo. III, cap. 89, - - - -	90
1. of Geo. IV, cap. 92, - - - -	95
Illustrations, - - - -	99

BANKRUPT.

CASSIO BONORUM, - - - -	99
Act 1621, cap. 18, - - - -	100
1696, cap. 5, - - - -	103
54. of Geo. III, cap. 137, - - - -	106
Illustrations, - - - -	157

BATTERY *PENDENTE LITE.*

Acts repealed,	162
------------------------	-----

BIGAMY.

Act 1551, cap. 19,	163
Illustrations,	ib.

BILLS OF EXCHANGE.

Act 1696, cap. 25,	164
1. and 2. of Geo. IV, cap. 78,	ib.
1681, cap. 20,	165
1696, cap. 36,	166
12. of Geo. III, cap. 72,	167

	Page.
Act 23. of Geo. III, cap. 18, . . .	169
18. of Geo. III, cap. 18, . . .	ib.
Illustrations, . . .	170

BONDS, HERITABLE AND MOVEABLE.

Act 1661, cap. 32, . . .	171
Illustrations, . . .	172

BRIEVES.

Act 1471, cap. 48, - - - - -	173
1474, cap. 56, - - - - -	174
1503, cap. 94, - - - - -	ib.
1587, cap. 60, - - - - -	176
1. and 2. of Geo. IV, cap. 38, - - - - -	ib.
Illustrations, - - - - -	ib.

BURGH-ROYAL.

Arrangement of statutes on this subject, - - -	177
--	-----

I. CONSTITUTION AND GOVERNMENT.

Act 1555, cap. 49, - - - - -	178
1587, cap. 112, - - - - -	179
1535, cap. 27, - - - - -	ib.
1563, cap. 83, - - - - -	180
1606, cap. 17, - - - - -	181
Illustrations of Division I. - - - - -	ib.

II. ELECTION.

Act 1469, cap. 30, - - - - -	182
1474, cap. 57, ratified by 1487, cap. 108, - - -	183
1503, cap. 80, 84, and 86, - - - - -	184
1535, cap. 26, - - - - -	ib.
1609, cap. 8, - - - - -	185
7. of Geo. II, cap. 16, - - - - -	ib.
16. of Geo. II, cap. 11, - - - - -	186

Act 14. of Geo. III, cap. 81,	-	-	-	Page.
Illustrations of Division II.	-	-	-	178
				189

III. COMMON GOOD.

Act 1491, cap. 36,	-	-	-	-	191
1535, cap. 26,	-	-	-	-	ib.
1593, cap. 181,	-	-	-	-	192
1693, cap. 28,	-	-	-	-	ib.
1695, cap. 42,	-	-	-	-	193
3. of Geo. IV, cap. 91,	-	-	-	-	194
Illustrations of Division III.	-	-	-	-	200

IV. WEIGHTS AND MEASURES.

Act 1491, cap. 33,	.	.	.	.	201
1540, cap. 114,	.	.	.	.	202
1607, cap. 2,	.	.	.	.	ib.
1621, cap. 17,	.	.	.	.	203
5. of Geo. IV. cap. 74,	.	.	.	.	ib.

V. TAXATION, WATCHING, AND WARDING.

Act 1587, cap. 111,	.	.	.	.	214
1592, cap. 153,	.	.	.	.	215
1594, cap. 225,	.	.	.	.	216
1597, cap. 275,	.	.	.	.	ib.
1597, cap. 276,	.	.	.	.	ib.
Illustrations of Division V.	.	.	.	.	217

VI. ROADS.

Act 1555, cap. 53,	.	.	.	.	217
1592, cap. 156,	.	.	.	.	218

VII. TRADE AND EXCLUSIVE PRIVILEGE.

Act 1672, cap. 5,	.	.	.	.	220
1690, cap. 12,	.	.	.	.	221
1698, cap. 19,	.	.	.	.	222
1698, cap. 20,	.	.	.	.	223
1424, cap. 39,	.	.	.	.	224
1457, cap. 67,	.	.	.	.	ib.
1487, cap. 107,	.	.	.	.	ib.

	Page.
Act 1592, cap. 152,	224
1592, cap. 154,	226
1607, cap. 4,	ib.
1607, cap. 6,	227
1661, cap. 47,	228
12. of Queen Anne, cap. 12,	ib.
56. of Geo. III, cap. 67,	ib.
Illustrations of Division VII. . . .	231
VIII. PRISONS.	
Act 1597, cap. 273,	234
1617, cap. 8, § 15,	ib.
21. of Geo. II, cap. 19, § 9,	235
59. of Geo. III, cap. 61,	236
Illustrations of Division VIII. . . .	247
IX. CONVENTION OF ROYAL BURGHS.	
Act 1487, cap. 111,	247
1578, cap. 64,	ib.
1581, cap. 119,	248
Illustrations of Division IX. . . .	ib.
X. RUINOUS HOUSES.	
Act 1594, cap. 226,	249
1663, cap. 6,	250
XI. ARRESTING STRANGERS.	
Act 1672, cap. 8,	251
Illustrations of Divisions XI,	252
XII. SEISINS IN BURGH.	
Act 1567, cap. 27, - - - -	253
1681, cap. 11, - - - -	ib.
XIII. CONFIRMATION OF PRIVILEGES.	
Act 1563, cap. 86, - - - -	253
1567, cap. 26, - - - -	254
1578, cap. 64, - - - -	255
1579, cap. 85, - - - -	ib.

	Page.
Act 1594, cap. 225,	255
1606, cap. 16,	ib.
1607, cap. 5,	256
1633, cap. 24,	ib.

CHILD-MURDER.

Act 1690, cap. 21,	257
49. of Geo. III, cap. 14,	258
Illustrations,	ib.

COLLIERS.

Act 39. of Geo. III, cap. 56,	259
57. of Geo. III, cap. 122,	263
Illustrations,	265

COMMONTY.

Act 1695, cap. 38,	265
1695, cap. 23,	266
Illustrations,	267

COMPENSATION.

Act 1592, cap. 141,	268
Illustrations,	ib.

COPY-RIGHT.

Act 1709, cap. 18,	269
8. of Geo. II, cap. 13,	ib.
12. of Geo. II, cap. 36,	ib.
7. of Geo. III, cap. 38,	270
15. of Geo. III, cap. 53,	ib.
17. of Geo. III, cap. 57,	271
41. of Geo. III, cap. 107,	ib.
54. of Geo. III, cap. 156,	272
Illustrations,	280

	Page.
COURT OF SESSION.	
Act 1579, cap. 93,	281
1592, cap. 132,	283
10. of Geo. I, cap. 18,	284
Act of Sederunt, 23. Feb. 1687,	286
1693, cap. 26,	289
1594, cap. 216,	ib.
1698, cap. 14,	290
10. of Q. Anne, cap. 1,	291
10. of Q. Anne, cap. 13,	ib.
10. of Q. Anne, cap. 12,	295
3. of Geo. II. cap. 32,	ib.
2. of Geo. III, cap. 27,	296
30. of Geo. III, cap. 17,	ib.
1. and 2. of Geo. IV, cap. 36,	ib.
6. of Geo. IV, cap. 120,	314
Illustrations,	339

COMMISSION OF TEINDS.	
Act 1707, cap. 9,	341
48. of Geo. III, cap. 138,	342
50. of Geo. III, cap. 84,	349
1. and 2. of Geo. IV, cap. 38, § 9, 10,	362
5. Geo. IV, cap. 72,	363
6. of Geo. IV, cap. 120, § 54,	370
Illustrations,	371

CURATORS.	
Act 1585, cap. 18,	372
1474, cap. 52,	373
1493, cap. 51,	ib.
1540, cap. 120,	ib.
1555, cap. 35,	374
1672, cap. 2,	ib.

					Page.
Act 1681, cap. 19,	-	-	-	-	378
1696, cap. 8,	-	-	-	-	ib.
— cap. 41,	-	-	-	-	380
Illustrations,	-	-	-	-	ib.

DEATH.

Act 1693, cap. 15,	-	-	-	-	382
Illustrations,	-	-	-	-	ib.

DEATHBED.

Act 1696, cap. 4,	-	-	-	-	384
Illustrations,	-	-	-	-	385

DECLINATURE OF JUDGES.

Act 1594, cap. 212,	-	-	-	-	388
1681, cap. 13,	-	-	-	-	ib.
1555, cap. 39,	-	-	-	-	ib.
Illustrations,	-	-	-	-	389

DIVORCE FOR DESERTION.

Act 1573, cap. 55,	-	-	-	-	390
Illustrations,	-	-	-	-	391

DOVECOTES.

Act 1617, cap. 19,	-	-	-	-	391
Illustrations,	-	-	-	-	392

DUEL.

Acts repealed,	-	-	-	-	392
----------------	---	---	---	---	-----

Page.

EJECTIONS.

Act 1594, cap. 217,	-	-	-	-	393
Illustrations,	-	-	-	-	ib.

ENTAILS.

Act 1685, cap. 22,	-	-	-	-	395
20. of Geo. II, cap. 50,	-	-	-	-	397
10. of Geo. III, cap. 51,	-	-	-	-	398
5. of Geo. IV, cap. 87,	-	-	-	-	412
Illustrations,	-	-	-	-	419

EPISCOPALIANS.

Act 10. of Q. Anne, cap. 6,	-	-	-	-	420
19. of Geo. II, cap. 38,	-	-	-	-	422
32. of Geo. III, cap. 63,	-	-	-	-	431

EXCHEQUER.

Treaty of Union, Article XIX,	.	.	.	.	439
Act 6. of Q. Anne, cap. 25,	.	.	.	.	ib.
Acts fixing the terms or sessions,	.	.	.	.	451
Act 4. of Geo. II, cap. 26,	.	.	.	.	ib.
Acts fixing the Barons' salaries,	.	.	.	.	452
Illustrations,	.	.	.	.	453

EXECUTION OF SUMMONS.

Act 1540, cap. 75,	.	.	.	.	453
1555, cap. 32,	.	.	.	.	454
— cap. 33,	.	.	.	.	455
1592, cap. 138,	.	.	.	.	ib.
— cap. 139,	.	.	.	.	456
1681, cap. 5,	.	.	.	.	ib.
1685, cap. 43,	.	.	.	.	ib.
1686, cap. 4,	.	.	.	.	457
Illustrations,	.	.	.	.	ib.

Page.

EXECUTORS.

Act 1540, cap. 120,	.	.	.	.	458
1617, cap. 14,	.	.	.	.	459
1690, cap. 26,	.	.	.	.	460
4. of Geo. IV, cap. 98,	.	.	.	.	ib.
Illustrations,	.	.	.	.	461

EXECUTOR-CREDITOR.

Act 1695, cap. 41,	.	.	.	.	462
Illustrations,	.	.	.	.	463

EXPENSES OF PROCESS.

Act 1557, cap. 64,	.	.	.	.	464
1587, cap. 43,	.	.	.	.	465
1592, cap. 142,	.	.	.	.	ib.
1696, cap. 22,	.	.	.	.	ib.
6. of Geo. IV, cap. 120, § 17, and 21,	.	.	.	.	466
Illustrations,	.	.	.	.	ib.

FISHERY.

Act 1661, cap. 39,	.	.	.	.	467
1690, cap. 34,	.	.	.	.	472
1705, cap. 2,	.	.	.	.	ib.
Treaty of Union, Art. VIII. and XV,	.	.	.	.	476

SALMON-FISHING.

Act 1424, cap. 10,	.	.	.	.	480
— cap. 35,	.	.	.	.	ib.
1477, cap. 74,	.	.	.	.	ib.
1449, cap. 8,	.	.	.	.	481
1469, cap. 38,	.	.	.	.	ib.
1489, cap. 15,	.	.	.	.	482
1503, cap. 72,	.	.	.	.	483
1535, cap. 16,	.	.	.	.	484

	Page.
Act 1535, cap. 17,	485
1563, cap. 68,	ib.
1579, cap. 89,	486
1594, cap. 224,	487
1597, cap. 261,	488
1600, cap. 11, }	ib.
1606, cap. 5, }	
1685, cap. 20,	489
1696, cap. 33,	ib.
Illustrations,	490

FORESTS.

Act 1617, cap. 18,	492
1685, cap. 20,	ib.
Illustrations,	493

FRIENDLY SOCIETIES.

Act 33. of Geo. III, cap. 54,	493
35. of Geo. III, cap. 111,	506
43. of Geo. III, cap. 111,	507
49. of Geo. III, cap. 125,	508
Illustrations,	511

GAME.

Obsolete enactments,	512
Act 1707, cap. 13,	513
1621, cap. 31,	515
13. of Geo. III, cap. 54,	ib.
57. of Geo. III, cap. 90,	521
Illustrations,	525

GLEBE.

Act 1563, cap. 72,	526
1572, cap. 48,	527

	Page.
Act 1578, cap. 62,	529
1581, cap. 100,	ib.
1592, cap. 116,	530
1593, cap. 161,	ib.
— cap. 162,	531
— cap. 163,	ib.
— cap. 165,	532
1606, cap. 7,	533
1617, cap. 6,	ib.
1621, cap. 10,	534
1633, cap. 8,	ib.
1663, cap. 21,	535
1594, cap. 199,	537
1644, cap. 31, }	ib.
1649, cap. 45, }	
Illustrations,	538

HIGHLANDS.

Obsolete statutes,	539
Statutes referring to the rebellions in 1715 and 1745,	540
Act 5. of Geo. IV, cap. 90,	541

HIGHWAYS, BRIDGES, AND FERRIES.

Act 1617, cap. 8,	542
1669, cap. 16,	543
1661, cap. 41,	548
1670, cap. 9,	549
1686, cap. 8,	ib.
12. of Geo. III. cap. 45,	551
53. of Geo. III. cap. 117,	559

TURNPIKE-ROADS.

Act 4. of Geo. IV. cap. 49,	563
Illustrations,	565

Page.

STARR OR BENT.

Act 1695, cap. 30,	-	-	566
15. of Geo. II, cap. 33, § 9,	-	-	567

INCORPORATIONS.

Act 7. of Geo. III, cap. 48,	-	-	568
6. of Geo. IV, cap. 131,	-	-	571
7. of Geo. IV, cap. 67,	-	-	572

END OF THE FIRST VOLUME.

VOLUME SECOND.

JURY COURT.

Act 59. of Geo. III. cap. 35,	.	.	.	1
6. of Geo. IV, cap. 120, § 28,	.	.	.	12
Illustrations,	.	.	.	23

JUSTICIARY COURT.

Act 1672, cap. 16,	.	.	.	23
1681, cap. 22,	.	.	.	25
7. and 8. of Geo. IV, cap. 20,	.	.	.	26
Statutes as to jurisdiction of the court,	.	.	.	27

	Page.
CIRCUITS.	
Act 23. of Geo. III, cap. 45,	29
1436, cap. 138,	33
1587, cap. 88,	ib.
— cap. 90,	34
— cap. 91,	ib.
1685, cap. 29,	35
1693, cap. 27,	36
1695, cap. 4,	ib.
1704, cap. 5,	37
8. of Queen Anne, cap. 14,	39
11. of Geo. I, cap. 26,	42
3. of Geo. II, cap. 32,	43
25. of Geo. II, cap. 37,	ib.
54. of Geo. III, cap. 67,	45
6. of Geo. IV, cap. 22,	46
7. of Geo. IV, cap. 8,	58
Illustrations, &c.	60
JUSTICE OF PEACE.	
Act 1609, cap. 7,	60
1633, cap. 25,	62
1685, cap. 16,	63
1686, cap. 20,	64
4. of Geo. IV, cap. 34,	65
1. of Geo. IV, cap. 37,	70
I. CUSTOMS.	
Act 49. of Geo. II, cap. 65,	73
II. INDORSATION OF WARRANTS.	
Act 44. of Geo. III, cap. 92,	78
54. of Geo. III, cap. 186,	79
III. SMALL DEBT COURT.	
Act 6. of Geo. IV, cap. 48,	81

	Page.
Act 43. of Geo. III, cap. 141,	94
Illustrations,	95

OATH OF CALUMNY.

Act 1429, cap. 125,	96
Illustrations,	ib.

PARLIAMENT.

Treaty of Union, Article XXII,	98
Article XXIII,	101

I. QUALIFICATION.

Early statutes,	102
Act 1661, cap. 35,	103
1681, cap. 21,	104
1690, cap. 11,	108
12. of Q. Anne, cap. 6,	ib.
1. of Geo. I, cap. 26,	111
22. of Geo. III, cap. 41,	112
37. of Geo. III, cap. 138,	114
22. of Geo. III, cap. 45,	116
41. of Geo. III, cap. 63,	120

II. PROCEDURE AT ELECTIONS.

Act 1706, cap. 8,	121
1707, cap. 23,	126
8. of Geo. II, cap. 30,	134
16. of Geo. II, cap. 11,	137
25. of Geo. III, cap. 84, § 14,	161
35. of Geo. III, cap. 65,	163
49. of Geo. III, cap. 118,	165

III. LIMITATION OF PERSONAL PRIVILEGES.

Act 10. of Geo. III, cap. 50,	169
Illustrations,	170

	Page.
PATRONAGE OF CHURCHES.	
Act 1567, cap. 7,	172
1581, cap. 102,	173
1592, cap. 114. and 115, }	173
1594, cap. 196,	ib.
1690, cap. 23,	174
1693, cap. 25,	175
1698, cap. 2,	176
10. of Q. Anne, cap. 12,	178
Illustrations,	182

PAWNBROKERS.	
Obsolete statutes,	183
Act 39. and 40. of Geo. III, cap. 99,	184
Illustrations,	214

PLANTING AND INCLOSING.	
Act 1661, cap. 41,	215
1669, cap. 17,	217
1685, cap. 39,	218
1686, cap. 11,	ib.
1698, cap. 16,	219
1. of Geo. I. cap. 48,	220
6. of Geo. III, cap. 36,	222
Illustrations,	224

POOR.	
Acts against sorners,	225
Act 1579, cap. 74,	ib.
1663, cap. 16,	230
1672, cap. 18,	232
6. of Geo. IV, cap. 27,	ib.
Illustrations,	235

	Page.
PRESCRIPTION.	
Division of the subject,	237
I. LONG NEGATIVE PRESCRIPTION.	
Act 1469, cap. 29,	238
1474, cap. 55,	ib.
Illustrations of Division I,	239
II. POSITIVE PRESCRIPTION.	
Act 1617, cap. 12,	239
1594, cap. 214,	242
1669, cap. 10,	243
1685, cap. 15,	ib.
Illustrations of Division II,	ib.
III. VICENNIAL PRESCRIPTION.	
Act 1617, cap. 13,	244
Illustrations,	245
IV. VICENNIAL PRESCRIPTION OF HOLOGRAPH DEEDS.	
Act 1669, cap. 9,	246
Illustrations,	ib.
V. DECENNIAL PRESCRIPTION.	
Act 1696, cap. 9, - - - - -	246
1669, cap. 9, - - - - -	247
1685, cap. 14, - - - - -	ib.
VI. SEPTENNIAL PRESCRIPTION.	
Act 1695, cap. 5,	248
Illustrations,	249
VII. SEXENNIAL PRESCRIPTION.	
Act 12. of Geo. III, cap. 72,	250
Illustrations,	ib.
VIII. QUINQUENNIAL PRESCRIPTION.	
Act 1669, cap. 9,	251

	Page.
IX. TRIENNIAL PRESCRIPTION.	
Act 1579, cap. 83,	251
Illustrations,	ib.
Act 1579, cap. 81,	252
— cap. 82,	ib.
X. TRIENNIAL PRESCRIPTION APPLICABLE TO WRONGOUS IMPRISONMENT,	
	253

PROOF.

Act 46. of Geo. III, cap. 37,	254
1597, cap. 247,	ib.
1540, cap. 117,	255
1555, cap. 29,	ib.
1579, cap. 80,	256
1584, cap. 4,	ib.
1593, cap. 175,	257
1672, cap. 21,	ib.
1681, cap. 5,	258
1686, cap. 17,	259
1696, cap. 15,	ib.
— cap. 25,	ib.

EXTRACTS.

Act 1496, cap. 28,	260
1579, cap. 75,	ib.
1581, cap. 119,	261
1617, cap. 16, }	ib.
1681, cap. 11, }	ib.
Illustrations,	ib.

REGISTRATION.

Treaty of Union, Art. XXIV, - - -	262
Division of the subject, - - -	263

I. SEISINS AND REVERSIONS.

Act 1617, cap. 16, - - -	263
Illustrations, - - -	266

	Page.
I. SEISINS IN BURGH.	
Act 1681, cap. 11,	266
1686, cap. 19,	268
Illustrations,	269
II. RESIGNATIONS AD REMANENTIAM.	
Act 1669, cap. 3,	269
Illustration,	270
III. CHARTERS FROM SUBJECT SUPERIORS.	
Act 1693, cap. 35,	270
IV. ENTAILS.	
Act 1685, cap. 22,	270
V. SUMMONS TO INTERRUPT PRESCRIPTION.	
Act 1696, cap. 19,	271
1698, cap. 5,	272
VI. ADJUDICATIONS.	
Act 1661, cap. 31,	273
VII. PROBATIVE WRITS.	
Act 1698, cap. 4,	274
VIII. HORNINGS.	
Act 1579, cap. 75,	275
1584, cap. 142,	276
1597, cap. 264,	277
Illustrations,	ib.
IX. INHIBITIONS.	
Act 1581, cap. 119,	278
X. WRITS PASSING THE GREAT AND PRIVY SEALS.	
Act 1621, cap. 24,	279

	Page.
Act 1679, cap. 7,	280
Illustration,	282

XI. RULE OF COMPETITION IN REAL RIGHTS.

Act 1693, cap. 13,	282
--------------------	-----

GENERAL REGULATIONS AS TO THE RECORDS.

Act 1600, cap. 21,	282
1672, cap. 16, § 32,	283
1685, cap. 33,	285
— cap. 38,	ib.
1693, cap. 14,	287
— cap. 15,	288
1696, cap. 18,	289
— cap. 39,	290
49. of Geo. III, cap. 42,	ib.
Illustrations,	298

REGISTRY OF SHIPS.

Date of statutes, &c. on this subject,	298
--	-----

REMOVING OF TENANTS.

Act 1546, cap. 3,	299
1555, cap. 39,	300
1690, cap. 39,	302
1693, cap. 24,	302
Act of Sederunt, 14. Dec. 1756,	ib.
Illustrations,	305

REPRESENTATION ON THE PASSIVE TITLES.

Act 1696, cap. 20,	306
Illustrations,	307

	Page.
RIOT ACT.	
Act 1. of Geo. I, cap. 5,	307
57. of Geo. III, cap. 19, § 38,	314

SAVINGS' BANKS.	
Act 59. of Geo. III. cap. 62,	315

SCHOOLS.	
Obsolete statutes,	322
Act 43. of Geo. III, cap. 54,	ib.
Illustrations,	333

SHERIFF.	
Act 1426, cap. 90,	334
— cap. 91,	335
1487, cap. 100,	336
— cap. 101,	ib.
— cap. 103,	337
1491, cap. 28,	ib.
1592, cap. 124,	339
1661, cap. 29,	341
20. of Geo. II, cap. 43,	342
21. of Geo. II, cap. 19,	345
28. of Geo. II. cap. 7,	ib.
3. of Geo. IV. cap. 49,	346
6. of Geo. IV. cap. 23,	347
— cap. 24,	ib.

COMMISSARIES.	
Act 4. of Geo. IV. cap. 97,	354
Illustrations,	363

	Page.
SHOOTING, STABBING, &c.	
Act 6. of Geo. IV, cap. 126, - - -	364
TACK.	
Act 1449, cap. 17, - - -	367
Illustrations, - - -	ib.
THIRLAGE.	
Act 39. of Geo. III, cap. 55, - - -	369
Illustrations, - - -	378
TRANSPORTATION.	
Act 5. of Geo. IV, cap. 84, - - -	379
TREASON.	
Treaty of Union, Art. XVIII, - - -	381
Act 7. of Queen Anne, cap. 21, - - -	382
25. of Edward III, cap. 2, - - -	ib.
Other statutory cases of treason, - - -	383
Act 19. of Geo. II, cap. 9, § 4, - - -	385
22. of Geo. II, cap. 48, - - -	ib.
39. and 40. of Geo. III, cap. 93, - - -	391
54. of Geo. III, cap. 146, - - -	392
Illustrations, - - -	393
SEDITION.	
Act 37. of Geo. III, cap. 123, - - -	393
52. of Geo. III, cap. 104, - - -	394
39. of Geo. III, cap. 79, - - -	ib.

	Page.
Act 6. of Geo. IV, cap. 47,	395
Illustrations,	396

USURY.

Acts fixing rate of interest,	397
Act 1600, cap. 7,	398
1621, cap. 28,	ib.
12. of Queen Anne, cap. 15,	399

WARDHOLDING.

Act 20. of Geo. II, cap. 50,	402
------------------------------	-----

WAREHOUSING ACT.

Act 6. of Geo. IV, cap. 112,	409
Illustrations,	ib.

WEAVERS.

Act 43. of Geo. III, cap. 151,	402
--------------------------------	-----

WITCHCRAFT.

Act 1563, cap. 73,	411
Illustrations,	ib.

WRONGOUS IMPRISONMENT.

Act 1701, cap. 6,	411
Illustrations,	419

THE END.





